116-671

TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1885.

No. 1193.

EDWARD M. HIGGINS AND FRED. F. GILBERT, PARTNERS, DOING BUSINESS AS HIGGINS & GILBERT, PLAINTIFFS, IN ERROR.

vs.

JAMES McCREA.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF OHIO.

FILED OCTOBER 30, 1885.

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INDEX.

	Original.	Print.
Citation	1	1
Service of citation	2	1
Writ of error	3	1
Return on writ of error	3½	2
Petition	3½	2
Precipe for summons	9	6
Summons and return	10	6
Motion to strike out part of petition	11	7
Notice to take testimony	12	8
Application for subpœna *duces tecum*	12	9
Special deputy's return	13	9
Subpœna *duces tecum*	14	10
Motion to quash subpœna *duces tecum*	15	10
Order overruling motion to strike out, &c.	19	13
Answer	19	13
Demurrer to counter claim	24	16
Motion to strike out part of answer	24	16
Order overruling demurrer, &c.	25	17
Interrogatories appended to answer	25	18
Reply	34	23
Order granting leave to file reply, &c.	36	24
Reply and answers to interrogatories	36	24
Motion for continuance	91	75

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	Original.	Print.
Order for continuance	98	79
Order granting leave to file amended answer	98	79
Amended answer	98	80
Order that original reply stand as reply to amended answer	105	84
Trial	106	85
Verdict	106	85
Motion for new trial	107	85
Judgment	114	90
Bill of exceptions	115	90
Rule and by-law of Chicago Board of Trade	115	90
Testimony of Edward P. Wright	116	91
Fred. F. Gilbert	116	91
Henry D. Gilbert	125	97
Telegrams and letters	126	98
Testimony of James McCrea	131	101
Fred. F. Gilbert	135	104
E. M. Higgins	205	105
Plaintiff's requests as to charge	219	166
Charge to jury	219	166
Exceptions to charge	221	167
Bond	223	168
Clerk's certificate to record	225	169
Assignment of errors	226	169
Clerk's certificate to assignment of errors	231	171

1 The United States of America, to James McCrea, Greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States to be holden at Washington on the first Monday of November next, that being the 3rd Monday of its next term, pursuant to a writ of error filed in the clerk's office of the circuit court of the United States for the eastern division of the northern district of Ohio, wherein Edward M. Higgins and Fred F. Gilbert, partners doing business as Higgins & Gilbert, are plaintiffs in error and you are defendant in error, to show cause, if any there be, why the judgment rendered against the said plaintiffs in error, as in the said writ of error mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness the honorable Martin Welker, district judge of the U. S.. and one of the judges of the circuit court for said district, this 19th day of October, in the year of our Lord one thousand eight hundred and eighty-five.

M. WELKER.

2 We acknowledge service of this citation & enter the appearance of the defendant in error, James McCrea, without further notice.

S. BURKE & WM. B. SANDERS,
Att'ys for James McCrea.

Cleveland, O., Oct. 20th, 1885.

3 UNITED STATES OF AMERICA, *ss:*

The President of the United States to the honorable the judges of the circuit court of the United States for the northern district of Ohio, eastern division, Greeting:

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said circuit court before you, the judges thereof, between Edward M. Higgins and Fred. F. Gilbert, partners doing business as Higgins & Gilbert, as plaintiffs, and James McCrea, as defendant, a manifest error hath happened, to the great damage of the said Higgins and Gilbert, partners as aforesaid, as by their complaint appears, we, being willing that error, if any hath been, should be duly corrected and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington on the first Monday of November next, it being the third Monday of the next term of the said Supreme Court to be then and there held, that, the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error what of right and according to the laws and customs of the United States should be done.

Witness the honorable Morrison R. Waite, Chief Justice of the said Supreme Court, the 15th day of October, in the year of our Lord one thousand eight hundred and eighty-five.

[Seal of the Circuit Court, North'n Dist. of Ohio.]

AUGUSTUS J. RICKS,
Clerk of the Circuit Court of the United States, N. D. O., E. D.

Allowed by—

—— ——.

3½ And afterwards, to wit, on the 15th day of October, the following return on writ of error was filed in said cause in said court, viz:

UNITED STATES OF AMERICA,
Eastern Division of the Northern District of Ohio:

I, Augustus J. Ricks, clerk of the circuit court of the United States within and for said district, do hereby certify that, in obedience to the command of the within writ of error, the court has duly searched the record and proceedings of the said court in the cause aforesaid, and now herewith transmit to the Supreme Court of the United States a full and complete transcript thereof.

In witness whereof I have hereunto set my hand and affixed the seal of said circuit court, at office in the city of Cleveland, this 15th day of October, A. D. 188–.

AUGUSTUS J. RICKS, *Clerk.*

And on the 10th day of August, A. D. 1883, the following petition was filed in said cause in said court, viz:

Petition.

UNITED STATES OF AMERICA:

United States Circuit Court, Northern District of Ohio, Eastern Division.

EDWARD M. HIGGINS and FRED. F. GILBERT, Partners Doing Business Under the Name and Style of Higgins and Gilbert,
vs.
JAMES MCCREA.

Plaintiffs say that they are and have been for more than a year last past partners, doing business under the name and style of Higgins and Gilbert, and that they, and each of them, are citizens of the State of Illinois; that said defendant is a citizen of the State of Ohio and a resident of said district and division. Plaintiffs further say that they are and have been for more than one year last past members of the Board of Trade in the city of Chicago, which is a corporation duly incorporated under the laws of the said State of Illinois for the purpose of facilitating the purchase, sale, and exchange of
4 pork, lard, and other products; that the members of said corporation are governed and controlled in their transactions with each other, and in their transactions for others who are not

members of said corporation, in such purchases, sales, and exchanges of the commodities mentioned by rules and by-laws adopted and enforced by said corporation in accordance with the charter thereof; that said defendant at the time of the transactions herein stated had full knowledge of the existence of such corporation, and that said plaintiffs were members thereof and *was* familiar with the rules and by-laws of the same, and of the obligations of plaintiffs as such members. And plaintiffs say in their first cause of action that on the nineteenth day of May, A. D. 1883, well knowing the premises, the said defendant requested and directed plaintiffs to make a contract in his behalf and for his account for the purchase of one thousand barrels of mess pork at nineteen dollars and fifty cents per barrel and one thousand tierces of prime steam lard at eleven and three-quarters cents per pound, the same to be delivered by the vendor at any time in the month of August, 1883; that such vendor might choose at which time payment for the same should be made; that in accordance with such request and direction, as brokers and agents for said defendant, plaintiffs made such contract of purchase for said defendant and upon his account.

And plaintiffs further say that on the 1st day of August, 1883, in execution of said contract, and in accordance with the conditions and terms thereof, the amount of pork and lard mentioned therein, to wit, one thousand barrels of mess pork and one thousand tierces of prime steam lard, was tendered to said plaintiffs, and the amount of money agreed to be paid therefor by said plaintiffs in behalf of said defendant was demanded by the vendor to be paid by the said plaintiffs; that in accordance with the instructions of said defendant and the terms and conditions of their agency for him said plaintiffs, at the instance and request of said defendant, received said pork and lard, and advanced for said defendant
5 in payment therefor the sum of fifty-eight thousand five hundred and fifty-three dollars and thirty-four cents, and also the sum of fifty-six dollars, the cost of inspection of the same; all of which they were bound and compelled to do by the terms of the said contract so as aforesaid made for the account of said defendant, and by the rules and by-laws and regulations of said board of trade, which constituted a part of the contract of agency existing between said plaintiffs and defendant, and a part of said contract of purchase so as aforesaid made by said plaintiffs for the account of said defendant. And plaintiffs say that on said first day of August, 1883, they gave to said defendant full, complete, and lawful notice of their actions and doings in his behalf with respect to said pork and lard, and that the same had been received and paid for by them for his account, and that the same was held by them, subject to his orders and directions, upon his reimbursing them for advances so as aforesaid made by them on his account, and that unless he, the said defendant should reimburse them for such advances as he had been requested to do, the said pork and lard would be sold in accordance with law and the rules of said board of trade for his account, and the proceeds applied in discharge of his indebtedness to said plaintiffs on account of such advances, and he, the said defendant, be

held by said plaintiffs for the payment of any balance in favor of
said plaintiffs; that in accordance with said notice, said defendant
having failed to give any directions to the contrary and having
failed to reimburse plaintiffs for the advances so as aforesaid made
by them, said plaintiffs caused said pork and lard to be sold according
to law and the rules, by-laws, and regulations of said board of
trade, and plaintiffs received as the result of such sale the sum of
forty-two thousand six hundred and fifteen dollars and ninety-seven
cents, for which said sum the defendant was given credit by
6 said plaintiffs. And plaintiffs say that defendant has paid to
them on account of said contract of agency, and on account
of advances made for him in said purchase, the sum of six thousand
six hundred and thirty-one dollars and sixty-six and two-thirds
cents, and that by reason of the premises defendant is indebted to
plaintiffs in this cause of action in the sum of nine thousand three
hundred and sixty-one dollars and seventy and one-third cents, with
interest thereon from the first day of August, A. D. 1883, which said
sum defendant has neglected and refused to pay, though requested
so to do.

Second cause of action.—Adopting and making a part of their
second cause of action all the allegations contained in said first
cause of action, except such allegations as relate to the amounts of
pork and lard purchased and the date of such purchase, for their
second cause of action plaintiffs say that on the twenty-second day
of May, 1883, well knowing the premises, the said defendant requested
and directed plaintiffs to make a contract in his behalf and
for his account for the purchase of one thousand barrels of mess
pork at nineteen dollars and eighty-two and one-half cents per
barrel, and one thousand barrels of mess pork at nineteen dollars
and ninety-five cents per barrel, and one thousand tierces of prime
steam lard at eleven and eighty-five one-hundredths cents per pound,
and one thousand tierces of prime steam lard at eleven and eighty-two
and a half one-hundredths cents per pound, the same to be delivered
by the vendor at any time in the month of August, 1883;
that such vendor might choose at which time payment for the same
should be made; that in accordance with such request and directions,
as brokers and agents for said defendants, plaintiffs made such
contract of purchase for said defendant and upon his account. And
plaintiffs further say that on the first day of August, 1883, in
execution of said contract and in accordance with the conditions
and terms thereof, the amount of pork and lard mentioned
therein, to wit, two thousand barrels of mess pork and two
thousand tierces of prime steam lard, was tendered to said
7 plaintiffs, and the amount of money agreed to be paid therefor
by said plaintiffs in behalf of said defendant was demanded
by the vendor to be paid by the said plaintiffs; that, in accordance
with the instructions of the said defendant and the terms and conditions
of their agency for him, said plaintiffs, at the instance and
request of said defendant, received said pork and lard, and advanced
for said defendant in payment thereof the sum of one hundred and
nineteen thousand two hundred and thirty-three dollars and seventy-

one cents, and also the sum of one hundred and twelve dollars, the cost of inspection of the same, all of which they were bound and compelled to do by the terms of said contract so as aforesaid made for the account of said defendant, and by the rules, by-laws, and regulations of said board of trade, which constituted a part of the contract existing between said plaintiffs and defendant, and a part of said contract of purchase so as aforesaid made by said plaintiffs for the account of said defendant. And plaintiffs say that on the first day of August, 1883, they gave to said defendant full, complete, and lawful notice of their actions and doings in his behalf with respect to said pork and lard, and that the same had been received and paid for by them for his account, and was held by them subject to his orders and directions upon his reimbursing them for advances so as aforesaid made by them on his account, and that unless he, the said defendant, should reimburse them for such advances as he had been requested to do the said pork and lard would be sold in accordance with the law and the rules of the said board of trade for his account and the proceeds applied in discharge of his indebtedness to said plaintiffs on account of such advances, and he, the said defendant, be held by said plaintiffs for the payment of any balance in favor of said plaintiffs; that, in accordance with said notice, said defendant having failed to give any directions to the contrary, and having failed to reimburse plaintiffs for the advances so as aforesaid
8 made by them, said plaintiffs caused said pork and lard to be sold according to law and the rules, by-laws, and regulations of said board of trade, and plaintiffs received as the result of such sale the sum of eighty-four thousand two hundred and fifty dollars and seventy-seven cents. And plaintiffs say that the defendant has paid to them on account of said contract of agency, and on account of advances made for him in said purchases, the sum of thirteen thousand two hundred and sixty-three dollars and thirty-three and one-third cents, and that, by reason of the premises, defendant is indebted to plaintiffs in this second cause of action in the sum of twenty-one thousand eight hundred and thirty-two dollars and sixty and two-thirds cents, with interest thereon from the first day of August, A. D. 1883, which said sum defendant has neglected and refused to pay, though requested so to do.

Third cause of action.—For the third cause of action plaintiffs say that it was agreed by and between said plaintiffs and defendant as a part of the contract of agency entered into by them in respect to the purchase of the lard and pork referred to in the first and second causes of action that the said defendant would pay to said plaintiffs as commissions for making such purchases for him at the rate of five cents per barrel for the pork and ten cents per tierce for the lard, and plaintiffs say that they purchased for said defendant three thousand barrels of pork and three thousand tierces of lard, and that, by reason of the premises and by reason of the existence of the facts alleged in the first and second causes of action herein—the allegations contained in such causes of action being adopted and made a part of this cause of action—the defendant is indebted to the plaintiffs in this cause of action in the sum of four hundred and fifty

dollars, with interest thereon from the first day of August, 1883, which said sum defendant has neglected and refused to pay, though requested so to do. Wherefore plaintiffs say that defendant
9 is indebted to them in the sum of thirty-one thousand six hundred and forty-four dollars and thirty-one cents, with interest thereon from the first day of August, A. D. 1883, for which said sum of thirty-one thousand six hundred and forty-four dollars and thirty-one cents, with interest thereon from the said first day of August, A. D. 1883, plaintiffs ask judgment against said defendant, together with their costs.

FRANCIS J. WING,
Attorney for Pl'ffs.

STATE OF OHIO, }
Cuyahoga County, } *ss:*

Personally appeared Francis J. Wing, who, being duly sworn, on his oath says that the plaintiffs in the above action are not residents of the State of Ohio; that affiant is the duly authorized agent and attorney of said plaintiffs, and that the allegations contained in the foregoing petition are true to the best of his knowledge and belief.

FRANCIS J. WING.

Sworn to before me and subscribed in my presence this tenth day of August, A. D. 1883.

O. C. BEATTY,
U. S. Com'r, N. D. O.

Precipe.

UNITED STATES OF AMERICA:

United States Circuit Court, Northern District of Ohio, Eastern Division.

EDWARD M. HIGGINS and FRED. F. GILBERT, Partners doing Business under the Name and Style of Higgins and Gilbert,

vs.

JAMES MCCREA.

To the clerk:

10 Please issue summons in the above-entitled action, returnable according to law. Amount claimed, $31,644.31, with interest thereon from the first day of August, A. D. 1883.

FRANCIS J. WING,
Att'y for Pl'ffs.

And afterwards, to wit, on the 10th day of August, A. D. 1883, the following summons was issued in said cause in said court, viz:

Summons.

THE UNITED STATES OF AMERICA,
Northern District of Ohio, Eastern Division, } *ss:*

The President of the United States of America to the marshal of the northern district of Ohio, Greeting:

You are hereby commanded to notify James McCrea that he has been sued by Edward M. Higgins and Fred. F. Gilbert, partners doing business under the name and style of Higgins and Gilbert, in the circuit court of the United States within and for the said district, and that unless he answers by the 8th day of September, A. D. 1883, the petition of the said plaintiffs against him filed in the clerk's office of said court at Cleveland, in said district, such petition will be taken as true, and judgment will be rendered accordingly. You will make due return of this summons on the 20th day of August, A. D. 1883.

Witness the Honorable Morrison R. Waite, Chief Justice of the United States, this 10th day of August, A. D. 1883, and in the 108th year of the Independence of the United States of America.

[SEAL.] A. J. RICKS, *Clerk,*
By O. C. BEATTY, *Deputy Clerk.*

Returnable 2nd Monday after issued. Ans. by 3rd Saturday after return day. Francis J. Wing acknowledged himself security for all costs for which the plaintiffs may be liable in this suit.

NORTHERN DISTRICT OF OHIO, *ss:*

On the 10th day of August, 1883, I delivered a true and duly certified copy of this writ to the within named James McCrea
11 at Cleveland, Ohio.

W. F. GOODSPEED, *U. S. Marshal,*
By JOHN ODELL, *Deputy.*

(Endorsed:) Summons. Amount claimed, $31,644.31, with interest thereon from the first day of August, A. D. 1883. Returnable August 20th, 1883. Rule for answer, September 8th, 1883. Returned and filed August 10th, 1883. A. J. Ricks, clerk.

And afterwards, to wit, on the 17th day of September, A. D. 1888, the following motion to strike out from petition was filed in said cause in said court, viz:

Motion to Strike out from Petition.

In the Circuit Court of the United States for the Northern District of Ohio.

EDWARD M. HIGGINS *et al.*, Plaintiffs, *vs.* JAMES MCCREA, Defendant.

Said defendant now comes and moves the court to strike from the petition herein as irrelevant and redundant matter the following-described facts thereof, to wit:

1. Beginning with the word "plaintiff" on the 10th line of the first page and including all contained between said words and the word "members" on the 14th line of the second page, inclusive.

2nd. Beginning with the word "all" on the 23rd line of the 3rd page to and including the word "defendant" on the first line of the 4th page.

3rd. Beginning with the word "all" on the 12th line of the 7th page to and including the word "defendant" on the 22nd line of said page.

4th. Beginning with the word "and" on the 19th line of the 8th page to and including the word "trade" on the 20th line of said page.

Defendant further asks that if the court be of the opinion that the matter hereinbefore asked to be striken out from said petition should be allowed to remain therein, then in that case defendant moves the court to compel the plaintiffs to make *his* petition more defi-
12 nite and certain in the following particulars, to wit:

1st. That *he* set out what the by-laws and regulations of the Board of Trade of Chicago are, which it is claimed governed said plaintiffs and which they allege were a part of the alleged contracts made with the defendant.

2nd. That they set out the manner of the alleged selling of pork and lard for the defendant on Aug. 1st; that is, what were the "by-laws and regulations of the "board of trade," which were followed in making such alleged sales.

S. BURKE & WM. B. SANDERS,
For Defendant.

And afterwards, to wit, on the 3rd day of October, A. D. 1883, the following notice was filed in said cause in said court, viz:

Notice [*of*] *Subpœna Duces Tecum, &c.*

In the Circuit Court of the United States for the Northern District of Ohio.

EDWARD M. HIGGINS & FRED. F. GILBERT, Partners, &c., Plaintiffs,
vs.
JAMES McREA, Defendant.

The above-named plaintiff will take notice that on Thursday, the 27th day of September, A. D. 1883, said defendant will take the depositions of said plaintiffs *de bene esse* at the office of and before Philip A. Hayne, Esq., U. S. commissioner, at his office, Nos. 52 and 53, Post-office Building, in the city of Chicago, in the State of Illinois, between the hours of 9 o'clock a. m. and six o'clock p. m. of said day, and the taking of said depositions will be adjourned from day to day, between the same hours, until completed.

S. BURKE AND WM. B. SANDERS,
Att'ys for Def't.

We have copy of above this 20th of September, 1883.

FRANCIS J. WING,
Att'y for Plaintiff-.

Application for Subpœna Duces Tecum, &c.

In the Circuit Court of the United States for the Northern District of Ohio.

EDWARD M. HIGGINS and FRED. F. GILBERT, Pl'f'ss,
vs.
JAMES McCREA.

13 Please issue *subpœna duces tecum* for Edward M. Higgins and Fred. F. Gilbert, commanding them to appear as witnesses before Philip A. Hayne, Esq., U. S. commissioner, on Sept. 27th, 1883, at 10 o'clock a. m., at his office in Chicago, Ill., and give their depositions in above-entitled cause, and to bring with them all books containing entries relating to business transactions between the firm of Higgins and Gilbert and said James McCrea, and all papers, letters, copies of letters, telegrams, and papers, and contracts relating to the transactions between said Higgins and Gilbert and James McCrea.

WM. B. SANDERS,
Att'y for Defendant.

To Wm. H. Bradley, Esq., clerk of circuit court, northern district of Illinois.

Special Deputy's Return.

UNITED STATES OF AMERICA, } *ss:*
Northern District of Illinois, }

Know all men by these presents that I have appointed, and by and by these presents do appoint, George M. Jones my true and lawful deputy to execute the annexed writ and to make return of the execution thereof according to law.

A. M. JONES, [SEAL.]
U. S. Marshal for the Northern District of Illinois.

I have served the annexed writ in the following manner, to wit: By reading the same to and in the presence and hearing of Edward M. Higgins and Fred. F. Gilbert, and also by handing to each of them the sum of one dollar and sixty cents in United States coin, as fees for attendance and for mileage in said cause as witnesses, on this 20th day of September, A. D. 1883. I did not serve ——, the *other* defendant therein named, being unable to find — within my district.

A. M. JONES,
United States Marshal,
By GEO. N. JONES,
Special Deputy.

UNITED STATES OF AMERICA,
Northern District of Illinois, } *ss:*

14 George N. Jones, being duly sworn, deposes and says that he served the annexed writ as stated in the foregoing return, and that the expense returned by him, in addition to the fees, was actually incurred, and that the same is according to law.

GEO. N. JONES.

Subscribed and sworn to before me this 21st day of September, A. D. 1883.

SAMUEL C. HAYES, [SEAL.]
Notary Public.

Subpœna.

Circuit Court of the United States of America.

NORTHERN DISTRICT OF ILLINOIS, *ss:*

The United States of America to the marshal of the northern district of Illinois, Greeting:

We command you to summon Edward M. Higgins and Fred F. Gilbert, and with them to bring all books containing entries relating to transactions between James McCrea and the firm of Higgins and Gilbert, and all papers, letters, copies of letters, telegrams and copies of telegrams in their possession or under their control, or control of either of them, relating to transactions between said Higgins and Gilbert and said James McCrea, if found in your district, to be and appear before Philip A. Hayne, Esq., U. S. commissioner of the circuit court of the United States for the northern district of Illinois, on the 27th day of September, 1883, at ten o'clock a. m., at his office, in custom-house, at Chicago, in the district aforesaid, to testify in behalf of the defendant in the cause wherein Edward M. Higgins *et al.*, as partners, are plaintiffs and James McCrea is defendant, now pending in the circuit court of the United States for the northern district of Ohio. And this you shall in nowise omit, under the penalty of the law in that case made and provided. And have you then and there this writ.

Witness the Hon. Morrison R. Waite, Chief Justice of the Supreme Court of the United States of America, at Chicago aforesaid, 15 this 20th day of September, in the year of our Lord one thousand eight hundred and eighty-three, and of our Independence the 108th year.

WM. H. BRADLEY, *Clerk.* [SEAL.]

Circuit Court of the United States for the Northern District of Ohio, Eastern Division.

EDWARD M. HIGGINS and FRED. F. GILBERT, Partners, etc., Plaintiffs,
vs.
JAMES MCCREA.

C. C. Bouney and F. J. Wing, attorneys for plaintiffs; Stevenson Burke and W. B. Saunders, attorneys for defendant, Mr. Bouney.

The plaintiff in this case having been served with a *subpœna duces tecum*, hereto annexed, and the notice, which is also hereto annexed, for the taking of their depositions on this day, and the production of certain books and papers specified in said subpœna, now appear with their counsel before Philip A. Hoyne, commissioner, who is named in said notice and subpœna, and object to the same and move to quash said subpœna and to go hence without day for the following causes, to wit:

First. This attempt to examine them and procure the production of their books and papers in this case is an evasion of the law and an attempt to procure indirectly such a production and examination of their books and papers as is not in conformity with the law and the practice of the court.

2nd. No issue has yet been formed in this cause, and the law does not permit the examination and production hereby sought until after such issue shall have been made.

3rd. No notice has been given or any motion made, nor any order of the court obtained, for the examination and production hereby sought. Such notice, motion, and order are under the statute of the United States a condition precedent to such examination and production.

16 4th. Said *subpœna duces tecum* is and ought to be held void for uncertainty, in this, that it doth not specify and define any books and papers which relate to the particular transactions involved in this cause, and is not limited to the matters set forth in the plaintiffs' complaint.

5th. No affidavit has been made or filed, setting forth and defining, with the necessary precision or otherwise, any necessity for the production and examination hereby sought.

6th. And said plaintiffs now here offer to prove in a preliminary way, and not by way of going into the evidence at large in this case, that there is now contained in the books of the defendant an account with the plaintiffs containing specifically the same items of property, entered at the same prices, as are sought to be recovered in and by the complaint of the plaintiffs; and hence there is no necessity for any further information in that regard to be obtained by such subpœna and notice.

7th. And these plaintiffs further say that they have never denied or withheld from said defendant a full and explicit account of all the transactions set forth in the complaint in this cause; but, on the contrary, have furnished him from time to time with such accounts, so that he is not in anywise uninformed about the same.

8th. And for a further objection to the production of such books and papers, in case the proper grounds should hereafter be laid therefor, which these plaintiffs protest has not yet been done, these plaintiffs would contend, as they now aver the fact to be, that their said books of account contain, together with the account of said defendant, a large number of other accounts with other persons, which accounts are largely of a private and confidential nature, and ought not to be produced for any public or general examination by the said defendant or any other persons.

9th. And for a further cause, for the same purpose and a
17 like nature as the one last aforesaid, said plaintiffs say that their said books of account are in constant use during the entire hours of the business of the day, and cannot be taken away from their said office without serious inconvenience and injury to their business.

10th. And said plaintiffs further say that if at any time during the progress of this cause a proper occasion should arise and proper ground be laid therefor, they would readily submit to a verification by any officer of the court or by the present commissioner or his clerk of the truth and correctness of the account furnished to said defendant by an examination of their said books and the entries therein.

11th. In conclusion of these objections the said plaintiffs now here offer to stipulate and agree that they will attend the trial of this cause in said court in person, and that they are advised it will be necessary for them so to attend and be examined to maintain this cause when and where said defendant will have full and ample opportunity to cross-examine them after their examination in their own behalf, and after the conclusion of their own side of this case said defendant will then and there have an opportunity to call them in his own behalf, if he shall be so advised.

12th. And hereupon said plaintiffs submit to prove and maintain the objections aforesaid as may now be required, and they respectfully refuse to submit to any further examination or to any production of the books and papers mentioned in said *subpœna duces tecum* unless they shall be thereto required by a proper order of the court. Said plaintiffs also insist that even if the defendant had a right to the examination and production hereby sought he should have applied for a commission to take depositions; and plaintiffs also say that, anticipating such application, they had requested notice and an opportunity to oppose the same before the judge of the court
18 where the cause was pending.

Mr. Burke: I ask that Edward M. Higgins and Fred. F. Gilbert be now sworn as witnesses in the cause in behalf of the defendant.

And thereupon the plaintiffs, under the advice of their counsel, refused to be sworn and to testify until after their objections aforesaid should have been decided by the court.

And thereupon the defendant, by his counsel, asked to have the matter of said refusal certified to the Hon. Henry W. Bloggett, judge of the northern district of Illinois, for his decision thereon. And thereupon, to save delay and expense of a formal certificate by the commissioner to said judge, it was agreed by the parties and they accordingly went in person before said judge and there stated to him the matters and things aforesaid, whereupon the matter aforesaid was heard and decided by said judge, who held and decided that said plaintiffs were justified in their said refusal to be sworn and testify in this cause. Thereupon said decision was reported back to said commissioner, who thereupon directed that said plaintiffs do go hence without delay. And thereupon said plaintiffs requested said commissioner to certify all and singular the matters aforesaid, which is accordingly done.

UNITED STATES OF AMERICA, } *ss:*
Northern District of Illinois, }

I, Philip A. Hoyne, a commissioner of the circuit court of the United States for the northern district of Illinois, do certify that the above and foregoing is a true and correct transcript of all the proceedings in the case of Edward M. Higgins and Fred. F. Gilbert *vs.* James McCrea, pending in the circuit court of the United States for the northern district of Ohio.

Witness my hand and seal.

PHILIP A. HOYNE, [SEAL.]
U. S. Commissioner N. D. Ill.

And afterwards, to wit, on the 6th day of November, it being a day of the October term, 1883, of said court, before Hon. Martin Walker, district judge, the following order was made in this cause, viz: 19

Order Overruling Motion.

EDWARD M. HIGGINS and FRED. F. GILBERT, Partners, etc.,
Plaintiffs,
vs.
JAMES MCCREA.

This cause came on this day to be heard upon the defendant's motion to strike out from the petition, and same was argued by counsel, and thereupon, upon consideration, it is ordered that said motion be overruled, and it is further ordered that plaintiffs have leave to amend their petition by filing a copy of the rules of the Chicago Board of Trade, which is accordingly done.

And afterwards, to wit, on the 12th day of November, A. D. 1883, the following answer was filed in said cause in said court, viz:

Answer.

In the Circuit Court of the United States for the Northern District of Ohio, Eastern Division.

EDWARD M. HIGGINS *et al.*, Partners, &c., Plaintiffs,
vs.
JAMES MCCREA, Defendant.

The defendant now comes and, answering the petition of the plaintiffs filed against him, says he admits that the plaintiffs are partners, as stated in said petition, and that they are members of the Chicago Board of Trade; but whether or not in the transactions complained of the plaintiffs acted in accordance with the rules of the Board of Trade this defendant is not informed, and therefore denies that such is the fact.

9th. And for a further cause, for the same purpose and a
17 like nature as the one last aforesaid, said plaintiffs say that
their said books of account are in constant use during the entire hours of the business of the day, and cannot be taken away from their said office without serious inconvenience and injury to their business.

10th. And said plaintiffs further say that if at any time during the progress of this cause a proper occasion should arise and proper ground be laid therefor, they would readily submit to a verification by any officer of the court or by the present commissioner or his clerk of the truth and correctness of the account furnished to said defendant by an examination of their said books and the entries therein.

11th. In conclusion of these objections the said plaintiffs now here offer to stipulate and agree that they will attend the trial of this cause in said court in person, and that they are advised it will be necessary for them so to attend and be examined to maintain this cause when and where said defendant will have full and ample opportunity to cross-examine them after their examination in their own behalf, and after the conclusion of their own side of this case said defendant will then and there have an opportunity to call them in his own behalf, if he shall be so advised.

12th. And hereupon said plaintiffs submit to prove and maintain the objections aforesaid as may now be required, and they respectfully refuse to submit to any further examination or to any production of the books and papers mentioned in said *subpœna duces tecum* unless they shall be thereto required by a proper order of the court. Said plaintiffs also insist that even if the defendant had a right to the examination and production hereby sought he should have applied for a commission to take depositions; and plaintiffs also say that, anticipating such application, they had requested notice and an opportunity to oppose the same before the judge of the court
18 where the cause was pending.

Mr. Burke: I ask that Edward M. Higgins and Fred. F. Gilbert be now sworn as witnesses in the cause in behalf of the defendant.

And thereupon the plaintiffs, under the advice of their counsel, refused to be sworn and to testify until after their objections aforesaid should have been decided by the court.

And thereupon the defendant, by his counsel, asked to have the matter of said refusal certified to the Hon. Henry W. Bloggett, judge of the northern district of Illinois, for his decision thereon. And thereupon, to save delay and expense of a formal certificate by the commissioner to said judge, it was agreed by the parties and they accordingly went in person before said judge and there stated to him the matters and things aforesaid, whereupon the matter aforesaid was heard and decided by said judge, who held and decided that said plaintifis were justified in their said refusal to be sworn and testify in this cause. Thereupon said decision was reported back to said commissioner, who thereupon directed that said plaintiffs do go hence without delay. And thereupon said plaintiffs requested said commissioner to certify all and singular the matters aforesaid, which is accordingly done.

UNITED STATES OF AMERICA, } ss:
Northern District of Illinois, }

I, Philip A. Hoyne, a commissioner of the circuit court of the United States for the northern district of Illinois, do certify that the above and foregoing is a true and correct transcript of all the proceedings in the case of Edward M. Higgins and Fred. F. Gilbert *vs.* James McCrea, pending in the circuit court of the United States for the northern district of Ohio.

Witness my hand and seal.

PHILIP A. HOYNE, [SEAL.]
U. S. Commissioner N. D. Ill.

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Order Overruling Motion.

EDWARD M. HIGGINS and FRED. F. GILBERT, Partners, etc.,
Plaintiffs,
vs.
JAMES MCCREA.

This cause came on this day to be heard upon the defendant's motion to strike out from the petition, and same was argued by counsel, and thereupon, upon consideration, it is ordered that said motion be overruled, and it is further ordered that plaintiffs have leave to amend their petition by filing a copy of the rules of the Chicago Board of Trade, which is accordingly done.

And afterwards, to wit, on the 12th day of November, A. D. 1883, the following answer was filed in said cause in said court, viz:

Answer.

In the Circuit Court of the United States for the Northern District of Ohio, Eastern Division.

EDWARD M. HIGGINS *et al.*, Partners, &c., Plaintiffs,
vs.
JAMES MCCREA, Defendant.

The defendant now comes and, answering the petition of the plaintiffs filed against him, says he admits that the plaintiffs are partners, as stated in said petition, and that they are members of the Chicago Board of Trade; but whether or not in the transactions complained of the plaintiffs acted in accordance with the rules of the Board of Trade this defendant is not informed, and therefore denies that such is the fact.

Defendant denies that at or about the times named in said petition he gave any instructions to or had any dealings with the plaintiffs, except as are hereinafter set forth.

Defendant further says that on May 12th, 1883, and for a long time prior thereto, the plaintiffs were engaged in the business of conducting, for themselves and others, speculative and gambling
20 transactions in pork and lard and other commodities on said Chicago Board of Trade; that is to say, the said plaintiffs would and did, whenever so requested by persons wishing to gamble upon the price of said commodities, either buy or sell any given quantity of the same for future delivery upon the understanding and agreement of all parties to the transaction that no property should actually be delivered or exchanged or change hands, but that when the time for delivery came the transaction should be settled by a process known on such board of trade as the settlement of differences; that is to say, if the person dealing through said plaintiffs had purchased either of said commodities for such future delivery, and at the time named for delivery the market price was higher than the price at which he had purchased, then in that case the person from whom he had purchased should pay him the difference between such contract price and the then market price, and in case the market price was lower than that at which he had purchased he would pay to the person from whom he had purchased the difference between such contract price and the then market price. And in conducting such gambling transactions plaintiffs required the persons dealing through them to deposit a sum of money, called a "margin," sufficient in amount to at all times equal the difference in the market price and the price at which the person had bought or sold as aforesaid, and with the agreement that if such a person failed to keep such a "margin" "good," that is, sufficient in amount, the plaintiffs might close the transaction and be no longer liable to the customer therefor. And defendant says that, being advised that the plaintiffs were conducting the business hereinbefore described, and being solicited by them so to do, and being himself desirous to gamble and speculate on the price of pork and lard, in the manner above described the defendant, on or about September 12th, 1882, directed the plaintiffs to conduct for him, in the certain amount of pork and lard then specified, the kind of transaction above described; that
21 is to say, to buy for January delivery, 1883, a large quantity of pork and lard, with the distinct agreement and understanding of all parties to the transaction that no pork or lard should be actually delivered, but that when the time for delivery, named in the contract, came, or before that time, the parties should mutually adjust the difference in the contract and market price, as hereinbefore stated, and shortly thereafter the said plaintiffs reported to this defendant that they had purchased pork and lard for January delivery as aforesaid; and thereafter and before the month of January, 1883, to wit, in the latter part of December, 1882, the said plaintiffs reported to this defendant that upon his request and by a process known on said board of trade as changing the deals from one month to another, that they had so changed the transaction by

which he had so purchased said commodities for January delivery so that the same were not deliverable until March, 1883; and thereafter, in the latter part of February, 1883, the said plaintiffs again reported to this defendant that they had upon his request again changed said transaction so that the time for delivery of said commodities was changed from March to June, 1883; and thereafter, to wit, about May 10th, 1883, the said plaintiffs reported to this defendant that they had at his request closed the transaction in said pork and lard by an adjustment of differences between the price at which this defendant had contracted for said commodities and the then market price, and that there remained in their hands to his credit a balance of eighteen hundred and ninety-five dollars, and defendant says that neither in said contract so made for January delivery, or March or June deliveries, did any pork or lard actually change hands, nor was it intended that it should so change hands or be delivered. And shortly after said tenth of May, 1883, this defendant directed the plaintiffs to continue to deal for him in said pork and lard, and to buy for him in the same manner in which they had been 22 buying since December, 1882, the number of barrels of pork and tierces of lard set out in the plaintiff's petition, and to apply the balance which then remained in their hands as a margin to protect them in said transaction. And shortly thereafter the plaintiffs reported to this defendant that they had bought the pork and lard specified in several causes of action in said petition, but the defendant avers that they had not actually purchased any pork or lard, nor contracted for the actual delivery of any pork or lard, and whether or not they made any contract or contracts with other persons in regard to such transaction this defendant is not informed, and therefore denies the same, and alleges that the transactions between him and the plaintiffs were simply conducted by said plaintiffs as principals and not as agents, as they now claim to have been, and thereafter, from said 12th of May up to and including June 15th, 1883, this defendant deposited and paid to said plaintiffs as margins upon said deal the sum of about eighteen thousand dollars; and along in the latter part of June, 1883, upon the plaintiffs calling upon this defendant for the further "margins" upon said deal, this defendant expressly notified said plaintiffs that he declined and refused longer to participate in said gambling transaction, and utterly and entirely repudiated the same, and notified the plaintiffs that anything which they did further in the matter was done at their peril and expense.

And, further answering, the defendant denies that said plaintiffs purchased any pork or lard as stated in their said petition, or that any pork or lard was actually delivered to them, delivered to and paid for by them as therein stated, but says that the whole transaction between him and the said plaintiffs was purely a speculative and gambling transaction, as hereinbefore stated, and that he does not owe the plaintiffs anything thereon. And he denies each allegation of said petition not hereinbefore expressly admitted.

23 *Counter-Claim.*

By way of further answer herein and for counter-claim against the said plaintiffs, this defendant hereby makes part of this counter-claim all the averments of his foregoing answer, and further says that upon said gambling transaction hereinbefore referred to he paid to the defendants, from time to time, various amounts of money as follows, to wit:

May 10th, 1,875 dollars; May 23rd, 4,000 dollars; May 26th, 2,000 dollars; June 4th, 3,000 dollars; June 9th, 3,000 dollars; June 12th, 3,000; June 14th, 1,000 dollars; June 15th, 1,000 dollars, and June 15th, 1,000 dollars, making in all an aggregate of nineteen thousand eight hundred and *ninety-seven* dollars, and defendant avers that said money was so paid to the plaintiffs on the illegal consideration aforesaid; that is, in the furtherance of the gambling transaction hereinbefore set forth; that such transaction was had in the State of Illinois, and that by the law of said State the transaction was illegal, and by force of the statute of the State of Illinois in such case provided he is entitled to recover such money from the plaintiffs, and that by reason of the premises the said plaintiffs are indebted to him in the said sum of nineteen thousand eight hundred and *ninety-seven* dollars, with interest from July 15th, 1883, for which sum he asks judgment against the said plaintiffs, and he prays that the petition of the plaintiffs against him may be dismissed.

THE STATE OF OHIO, *Northern District:*

James McCrea, being duly sworn, says that he is the defendant above named, and that the facts stated in his foregoing answers are true, as he verily believes.

JAMES McCREA.

Subscribed by said James McCrea in my presence and by
24 him sworn to before me Nov. 12th, 1883.

HARRY L. VAIL, [SEAL.]
Notary Public.

And afterwards, to wit, on the 28th day of November, 1883, the following demurrer to counter-claim was filed in said cause in said court, viz:

Demurrer.

In the Circuit Court of the United States, Northern District of Ohio,
Eastern Division.

EDWARD M. HIGGINS *et al.*, Partners, &c., Plaintiffs,
vs.
JAMES McCREA, Defendant.

Now comes the said plaintiffs and demurs to the counter-claim set forth in the answer of the defendant filed herein, for the reason that the same does not state facts sufficient to constitute a counter-claim in favor of said defendant and against *this* plaintiff-.

FRANCIS J. WING,
Att'y for Pl'ff-.

And afterwards, to wit, on the 28th day of November, 1883, the following motion to strike out from answer was filed in said cause in said court, viz:

Motion.

In the Circuit Court of the United States, Northern District of Ohio, Eastern Division.

Edward M. Higgins *et al.*, Partners, &c., Plaintiffs,
vs.
James McCrea, Defendant.

Now comes the plaintiff- and moves the court to strike out from the answer of defendant filed herein that part commencing with the words "defendant further says that on May 12th, 1883," and ending with the words "that it should so change hands or
25 be delivered," for the reason that the allegations designated are irrelevant, redundant, and immaterial.

FRANCIS J. WING,
Pl'ff s' Att'y.

And afterwards, to wit, on the 26th day of January, A. D. 1884, it being a day of the October term, 1883, of said court, the Hon. Martin Welker, district judge, presiding, the following order was made in this case, viz:

Order Overruling Motion.

Edward M. Higgins *et al.*, Partners, &c., Plaintiffs,
vs.
James McCrea, Defendant.

This day came the parties and came on to be heard the plaintiffs' motion to strike out from the defendant's answer that part commencing with the words "defendant further says that on May 12th, 1883," and ending with the words "that it should so change hands or be delivered," and said motion was argued, and thereupon it is ordered that said motion be overruled; and then came on also to be heard the plaintiffs' demurrer to defendant's counter-claim, and was argued by counsel, and thereupon it is ordered that said demurrer be overruled. And upon application of defendant it is ordered that he has leave to amend his answer by appending thereto pertinent interrogations, and this cause is continued until the next term of this court.

And afterwards, to wit, on the 29th day of January, A. D 1884, the following appended interrogations were filed in said cause in said court, viz:

Appended Interrogations.

In the Circuit Court of the United States for the Northern District of Ohio, Eastern Division.

EDWARD M. HIGGINS *et al.*, Partners, &c., *vs.* JAMES MCCREA.

26 Interrogatories to be answered by plaintiffs.

By leave of the court first had and obtained the defendant files with and as part of his answer herein the following interrogatories, which are required to be answered by the said plaintiffs under oath, to wit:

1. Did you, on or about the following dates respectively, to wit, Sept. 12th, 1882, September 13th, 1882, September 18th, 1882, September 25th, 1882, and October 3rd, 1882, buy for the defendant different quantities of pork and lard for delivery in January, 1883, namely: On said September 12th, one thousand barrels of pork; on said September 13th, one thousand barrels of pork and one thousand tierces of lard; on said September 18th, two thousand tierces of lard and one thousand barrels of pork; on said September 25th, one thousand barrels of pork and one thousand tierces of lard; on said October 3rd, 1882, one thousand barrels of pork and one thousand tierces of lard; or on or about such dates, any other quantities or quantity of such commodities?

2nd. If you answer the foregoing interrogatory in the affirmative, then state, further, from whom you made such purchases respectively, giving the name and business address of each person or firm from whom you so claim to have purchased?

3rd. Was there a written contract evidencing such purchases? If so, give a copy of each of such contracts.

4th. What, if anything, did you pay to the person or persons from whom you claim to have made such purchase? Give in detail the amount and date of each payment, if any were made, and how the same were made, whether by check or cash, or otherwise.

5th. Was either the pork or lard so purchased, or any part thereof, delivered to you or to the defendant in January, 1883, or at any other time?

6th. If you state that said pork or lard, or any part there-
27 of, was delivered to you, state when it was delivered, by whom
it was delivered, where it was delivered, and how it was delivered, and also where the pork or lard, or both, were stored just prior to and after its delivery to you—that is, in what warehouse and in whose name were warehouse receipts for the pork and lard issued, and what was the particular brand of the pork and lard?

7th. If you state that any of such pork or lard was delivered to you, state what disposition you made of it after it was so delivered? If *so* sold it, to whom did you sell?

8th. If you state that such pork or lard, or any part thereof, was delivered to you, state what you paid to the vendor who so delivered the same, in consideration of such delivery, giving the dates and amounts and manner of payment?

9th. Did you, on or about the following-named dates, to wit, December 28th, 1882, and December 29th, 1882, sell for the defendant five thousand tierces of lard and five thousand barrels of pork for delivery in January, 1883?

10th. If you answer the last foregoing interrogatory in the affirmative, then state, further, to whom you made such sale or sales, giving the name and business address of each person or firm to whom you so claim to have sold such pork or lard or any other quantity of such pork or lard about said dates for said defendant.

11th. Was there a written contract evidencing such sales respectively? If so, give a copy of each of such contracts?

12th. What consideration, if any, did you receive from the person or persons to whom you claim to have so sold said pork and lard? Give in detail the dates and modes of payment.

13th. Did you, in the month of January, 1882, or at any other time, deliver said pork and lard to the persons to whom you claim to have sold the same, or did you deliver any part thereof to them in January, 1882, or at any other time? Did you hold warehouse receipts for this January pork and lard; if so, by whom were they issued and to whom?

28 14th. If you answer that you did deliver pork and lard to such purchasers, then state when it was so delivered to them, where it was delivered to them, where you procured the pork and lard which you did so deliver to them, and where it was stored at the time it was delivered?

15th. If you claim to have made such delivery state what was paid to you by the purchaser or purchasers at the time you so claim to have delivered such commodities to them.

16th. Did you, on or about the following dates, to wit, December 28th and 29th, 1882, buy for the defendant five thousand barrels of pork and five thousand tierces of lard or any other quantity or quantities of such commodities for delivery in March, 1883?

17th. If you answer the last foregoing interrogatory in the affirmative, then state, further, from whom you made such purchase or purchases respectively, giving the name and business addresses of each person or firm from whom you so claim to have purchased.

18th. Was there a written contract evidencing such purchases respectively; if so, give a copy of each of such contracts?

19th. What, if anything, did you pay to the person or persons from whom you so claim to have purchased at the date of making such purchase or purchases?

20th. Was the pork and lard so purchased, or any part thereof, delivered to you or the defendant in March, 1882, or at any other time?

21st. If you say that the pork and lard last mentioned was delivered to you, state when it was delivered, *when it was delivered*, by whom it was delivered, and the manner of its delivery, and state where it was stored just prior to and after such delivery: Did you have warehouse receipts for the pork and lard; if so, by whom were they issued, and to whom and what was the brand of the lard and pork?

22nd. If you say such pork and lard was delivered to you, state what disposition you made of it after it was so delivered.

23rd. State what you paid to the vendor who so delivered
29 such commodities to you, giving the dates and amounts and
manner of each payment if any you claim was made.

24th. Did you, on or about the following dates, to wit, February 23rd, February 24th, and February 26th, 1883, sell for the defendant five thousand barrels of pork and five thousand tierces of lard for delivery in March, 1883?

25th. If you answer the last foregoing interrogatory in the affirmative, then state to whom you so sold said pork and lard for March delivery, giving the name and business addresses of each person or firm to whom you so claim to have made such sale or sales.

26th. Was there a written contract evidencing such sale or sales, respectively, for March delivery? If so, give a copy of each of said contracts.

27th. What, if anything, was paid to you by the person or persons to whom you claim to have made such sales for March delivery at the time you claim to have made such sale? If you claim any such payments were made give the amounts and dates and manner of payment of each item.

28th. Was the pork and lard which you claim to have sold for the defendant for March delivery delivered by you to the persons to whom you claim to have sold the same, either in March, 1883, or at any other time? Did you have warehouse receipts for this *the* March pork and lard? If so, by whom were they issued and to whom?

29th. If you state that you did deliver such pork or lard in March, or at any other time, to the purchaser or purchasers to whom you claim to have sold the same state when and how you procured the pork and lard which you delivered; then state when it was delivered, where it was delivered, by whom it was delivered, and where it was stored just prior to and after such delivery, and what was the particular brand of the pork and lard.

30th. If you claim to have made such delivery in March,
30 or at any other time, state what was paid to you by the pur-
chaser or purchasers to whom you so delivered such commodities, giving separately the dates, amounts, and items of each payment and the manner of each payment.

31st. Did you, on or about the following-named dates, to wit, February 23rd, February 24th, and February 26th, 1883, buy for the defendant five thousand tierces of lard and five thousand barrels of pork for delivery in June, 1883, or any other quantity or quantities of such commodities?

32nd. If you answer the last foregoing interrogatory in the affirmative, then state, further, from whom you made such purchases, respectively, giving the name- and business addresses of each person or firm from whom you so claim to have purchased.

33rd. Was there a written contract evidencing such purchases for June delivery? If so, give a copy of each contract.

34th. What, if anything, did you pay to the person from whom you claim to have so purchased for June delivery at the time of such purchases or purchase? Give the dates and amounts and manner of each payment, if any, you claim were made?

35th. Was the pork and lard, or any part thereof, which you so claim to have purchased for June delivery delivered to you or to the defendants in June, 1883, or at any other time?

36th. If you say such pork and lard was delivered to you in June, or at any other time, then state when it was delivered, where it was delivered, by whom it was delivered, and the manner in which it was delivered, and where it was stored just prior to and after its delivery. Did you receive warehouse receipts for this property? If so, by whom were they issued and to whom?

37th. If you claim that such pork and lard was delivered to you in June, or at any other time, state what disposition you made of it after it was delivered to you.

38th. If you claim that such pork and lard was delivered
31 to you in June, or at any other time, state what you paid to
the vendors who so delivered such commodities to you, giving the amounts and dates and manner of each payment.

39th. Did you, on or about the following dates, to wit, May 8th and May 7th, 1883, sell for the defendant five thousand tierces of lard and five thousand barrels of pork for delivery in June. 1883?

40th. If you answer the last foregoing interrogatory in the affirmative, then state further to whom you made such sale or sales of pork and lard for June delivery, giving the name and business addresses of each person or firm to whom you so claim to have made such sale or sales.

41st. Was there a written contract evidencing the sales last before mentioned respectively? If so, give a copy of each of such contracts.

42nd. What, if anything, was paid to you by the person or persons to whom you claim to have so sold for June delivery, at the time you so made sale? Give the amount and date and mode of each payment, if any, you claim were made.

43rd. Was the pork and lard which you so claim to have sold for June delivery, or any part thereof, delivered by you to the purchaser or purchasers to whom you claim to have to have sold the same, either in June, 1883, or at any other time? Did you have warehouse receipts for the same; if so, by whom were they issued and to whom—what was the brand of the pork and lard?

44th. If you state that you did so deliver said pork and lard sold for June delivery, state when and from whom you procured the same; when, where, and to whom you delivered it, and the manner in which it was delivered and where it was stored just prior to and after its delivery by you.

45th. If you claim to have made such deliveries in June, or at any other time, state what was paid to you at the time you so delivered such commodities, giving the amounts and dates and manner of each payment.

32 46th. Give the name of the person or persons with whom you claim to have made the contract for purchase of pork and lard alleged in the first cause of action in your petition.

47th. Were there written contracts evidencing the transaction alleged in the first cause of action in the petition? If so, give a copy of each of said contracts.

48th. Give the name or names of the persons whom you allege delivered you the pork and lard mentioned in the first cause of action in the petition, with their business addresses.

49th. State where you claim the pork and lard was delivered to you, on the 1st day of August, 1883, mentioned in your first cause of action, and by whom it was delivered, and the mode and manner of delivery and where the same was stored at the time it was delivered to you. If you claim to have received warehouse receipts, state by whom they were issued and to whom.

50th. State to whom you claim to have paid the sum of $55,553.34, as stated in the first cause of action in the petition, and how you paid the same, whether in cash or check, or otherwise, and, if by check or draft, give the name of the bank or person upon which such check or draft was drawn.

51st. State to whom you claim to have sold the pork and lard mentioned in the first cause of action in the petition on the 1st of August, 1883, giving the name and address of each person or persons to whom you claim to have sold the same.

52nd. State how the sum of $42,615.97, which you allege in the petition was received from such sale, was paid to you, and by whom, and whether in cash or draft or check or otherwise, and, if by check or draft, give the name of the person or bank upon which such check or draft was drawn, with the business address of such person or bank.

53rd. Give the name of the person or persons from whom you
claim to have purchased the pork and lard for this defend-
33 ant mentioned in the second cause of action in the petition,
with the business address of each person or persons?

54th. State what amount of money you paid to the person or persons from whom you claim to have made the purchase mentioned in the first and second causes of action, at the date you allege such purchases were made, and how you made such payments, whether by check or draft or cash, or otherwise; and, if by check or draft, give the name of the person or bank upon which such check or draft was drawn, and the address of such person or bank.

55th. State where the pork and lard mentioned in the second cause of action in the petition was delivered to you, as alleged therein, on the 1st day of August, 1883, and by whom it was delivered, and the mode and manner of such delivery, and where the commodities were stored at the time of such delivery, with the name and address of each person connected with such transaction; if you held warehouse receipts, state by whom they were issued and to whom.

56th. State to whom you claim to have paid, on the 1st day of August, 1883, as mentioned in the second cause of action in the petition, the sum of $119,233.71, with the business address of such person or persons.

57th. State how you claim to have paid said sum of $119,233.71; did you pay it in cash or by check or draft; if not, how did you pay it? And, if you state it was paid by check or draft, state the bank or person upon whom such check or draft was drawn, with the business address of such person or bank.

58th. What are the names and business addresses of the person or persons to whom you claim to have sold the pork and lard mentioned in the second cause of action on the first day of August, 1883?

34 59th. Give the name and business address of the person or persons who you claim paid you, on the 1st day of August, 1883, the sum of $84,250.70 for the pork and lard mentioned in the second cause of action in the petition, and state how such sum of money was paid to you, whether in cash or check or draft, or otherwise, and, if by check or draft, give the name of the bank or person upon which such check or draft was drawn.

60th. State how you made delivery of the amount of pork and lard mentioned in the first and second causes of action to the persons to whom you claim to have sold the same on the 1st of August, 1883; where was such pork and lard at the time you so delivered it; if in a warehouse give the name of such warehouse and its location, and give the names of each person in any way connected with such delivery.

And afterwards, to wit, on the 11th day of February, A. D. 1884, the following reply was filed in said cause in said court, viz:

Reply.

In the Circuit Court of the United States for the Northern District of Ohio, Eastern Division.

EDWARD M. HIGGINS *et al.*, Partners, &c., Plaintiffs,
vs.
JAMES MCCREA, Defendant.

Now come the plaintiffs and, for reply to the answer filed herein by the defendant, say that they admit that on or about the 12th day of September, 1882, the defendant directed the plaintiffs to buy a certain amount of pork and lard, the same to be delivered some time in the month of January, 1883; and plaintiffs admit that they reported to said defendant that such purchase of pork and lard had been made for his account; and plaintiffs admit that the change in
the time of delivery of the products above referred to was
35 made at the direction and request of the defendant, and that
the action of said plaintiffs in that regard were duly reported
to the defendant. And plaintiffs admit that the profits in money arising from such transactions were credited to the defendant. And plaintiffs further admit that on or about the 10th day of May the defendant directed the plaintiffs to buy for him the number of barrels of pork and tierces of lard set out in the petition, and that in such purchase the balance of money in the hands of the plaintiffs credited to the defendant was applied, and that such application of such balance was made by the direction of the defendant. And

plaintiffs admit that shortly afterwards the plaintiffs reported their actions and doing in that regard to the defendant. And plaintiffs deny each and every allegation in the answer of the defendant filed herein, except what is herein expressly admitted. And plaintiffs further deny each and every allegation contained in the counterclaim of the defendant filed herein.

FRANCIS J. WING,
Att'y for Pl'ffs.

STATE OF OHIO, } *ss:*
Cuyahoga County, }

Personally appeared Francis J. Wing, who, being duly sworn, says that the plaintiffs are non-residents of this State and district, and are now absent therefrom; that he is their duly authorized agent, and that the allegations contained in the foregoing reply are true, as he verily believes.

FRANCIS J. WING.

Sworn to before me and subscribed in my presence this 11th day of February, A. D. 1884.

O. C. BEATTY,
U. S. Com'r, N. D. O.

36 And afterwards, to wit, on March 14th, 1884, it being a day of the February term, 1884, of said court, Hon. Martin Welker, district judge, presiding, the following order was entered in this case, viz:

Leave to File Reply.

EDWARD M. HIGGINS *et al.*, Plaintiffs,
vs.
JAMES MCCREA, Defendant.

In this case the plaintiffs have leave to file their reply and answers to defendant's interrogatories instanter, which is accordingly done.

And afterwards, to wit, on the 14th day of March, 1884, the following reply and answers to defendant's interrogatories was filed in said cause in said court, viz:

Reply and Answers to Defendant's Interrogatories.

In the Circuit Court of the United States for the Northern District of Ohio, Eastern Division.

EDWARD M. HIGGINS *et al.*, Partners, &c., Plaintiffs,
vs.
JAMES MCCREA, Defendant.

Now comes the plaintiffs, and, for reply to the answer filed herein by the defendant, say that they admit that on or about the 12th day of September, 1882, the defendant directed the plaintiffs to buy a certain amount of pork and lard, the same to be delivered some time

in the month of January, 1883. And plaintiffs admit that they reported to said defendant that such purchases of pork and lard had been made for his account. And plaintiffs admit that the change in the time of delivery of the products above referred to was made at the direction and request of the defendant, and that the action of said plaintiffs in that regard were duly reported to the defendant. And plaintiffs admit that the profit in money arising from such
37 transactions were credited to the defendant. And plaintiffs
further admit that on or about the 10th day of May the defendant directed the plaintiffs to buy for him the number of barrels of pork and tierces of lard set out in the petition, and that in such purchase the balance of money in the hands of the plaintiffs credited to the defendant was applied, and that such application of such balance was made by the direction of the defendant. And plaintiffs admit that shortly afterwards the plaintiffs reported their actions and doings in that regard to the defendant. And plaintiffs deny each and every allegation in the answer of the defendant filed herein, except what is herein expressly admitted. And plaintiffs further deny each and every allegation contained in the counterclaim of the defendant filed herein.

FRANCIS J. WING,
Atty. for Pl'ffs.

STATE OF OHIO,
Cuyahogo County, } *ss:*

Personally appeared Francis J. Wing, who, being duly sworn, says that the plaintiffs are non-residents of this State and district, and are now absent therefrom; that he is their duly authorized agent, and that the allegations contained in the foregoing reply are true, as he verily believes.

FRANCIS J. WING.

Sworn to before me and subscribed in my presence this 11th day of February, A. D. 1884.

O. C. BEATTY,
U. S. Com'r, N. D. O.

38 UNITED STATES OF AMERICA.

NORTHERN DISTRICT OF OHIO,
Eastern Division of said District, } *ss:*

In the Circuit Court of the United States for said Division.

EDWARD M. HIGGINS and FRED. F. GILBERT, Copartners doing Business under the Firm Name and Style of Higgins & Gilbert,
vs.
JAMES McCREA. } At Law.

The answers of the above-named plaintiffs to the interrogatories of said defendant, filed with his answer in this case.

The plaintiffs, protesting that all and so many of said interrogatories as relate to any other transactions than those which

are specified in their petition in this case are wholly irrelevant and immaterial, and that these plaintiffs are not nor can lawfully be in anywise required to answer the same, nevertheless, to avoid all cause or excuse for delay in the trial of this action,
39 these plaintiffs, saving and reserving all exceptions that may be had or taken to said interrogatories, or any of them, and all their rights under any such exceptions, now make the following answers to said interrogatories respectively, to wit:

We have read the various questions relating to the first purchases specified in the interrogatories, and will answer them together by giving a statement of just what we did in relation to those transactions, with such explanations as we think are necessary to enable the court and jury to understand the method of doing business under the rules of the Board of Trade of the city of Chicago.

Our transactions with James McCrea began January, 1881. Between that date and September, 1882, we bought for him on his order and shipped to Cleveland, O., 22 car loads of hog product amounting to $42,525.93 *dollars.* This property was billed to A. J. McCrea by direction of James McCrea, his brother. We drew on A. J. McCrea by the direction of James McCrea for the amount, which was paid by the latter.

September 12, 1882, we received an order from A. J. McCrea by telegraph to purchase for his account 1,000 b'r'ls pork and
40 1,000 t'c's lard, for January delivery, September 13, 1882. We received an order from A. J. McCrea by telegraph to purchase for his account 1,000 b'r'ls pork for January delivery. On September 18, 1882, we received an order from A. J. McCrea by telegraph to purchase for his account 1,000 b'r'ls pork and 2,000 t'c's lard for January delivery. On September 25, 1882, we received an order from A. J. McCrea by telegraph to purchase for his account 1,000 b'r'ls pork and 1,000 t'c's lard for January delivery. On October 3, 1882, we received an order from James McCrea by telegraph to purchase for the account of A. J. McCrea 1,000 b'r'ls pork and 1,000 t'c's lard for January delivery.

We filled the foregoing orders as follows:

1882.

Sept.	12.	Bought	250	b'r'ls pork	for Jan'ry	delivery	1827½
“		“	750	“	“	“	1830
	13.	“	250	“	“	“	1862½
“		“	500	“	“	“	1860
“		“	250	“	“	“	1857½
“		“	250	tcs. lard	“	“	1127½
“		“	750	“	“	“	1125
	18.	“	1,000	“	“	“	1145
“		“	1,000	“	“	“	1150
“		“	1,000	b'r'ls pork	“	“	1890
	25.	“	1,000	“	“	“	1897½
“		“	500	tcs. lard	“	“	1157½
“		“	500	“	“	“	1160
Oct.	3.	“	500	“	“	“	1155
“		“	500	“	“	“	1157½
“		“	1,000	b'r'ls pork	“	“	1917½

On October 20, 1882, we received orders from A. J. McCrea to transfer the above property to James McCrea, which we did, the transfer being accepted by him in his letter of the 17th Oct., when he ordered it transferred, saying it was his property.

41 From the time of purchase to December 28th and 29th markets ruled lower. At that date there was a decline and depreciation in value on the pork of $8,818.75, and on the lard of $18,680.00.

At that time McCrea ordered us by telegraph to change the delivery of his pork and lard to March, 1883, which we did by selling his January property and buying for his account the same amount of property to be delivered in March, and charged the above depreciation and decline in price to his account, which was more than covered by the remittances which he had previously sent us on this account. We had actually paid out this money on the purchases for McCrea. We got nothing out of these transactions except our commissions, amounting to $750, which was charged to McCrea's account, Dec'r 28th and 29th.

The pork and lard bought for McCrea, to be delivered in January, was disposed of under his orders of 28th and 20th December, 1882, to change the purchase to March delivery, which we did as follows:

42 Dec. 28, 1882.	Sold	1,000	b'r'ls pork	for January	delivery	1702½
28,	“	750	“	“	“	1700
Dec. 28, 1882.	Sold	1,250	b'r'ls pork	for January	delivery	1695
28,	“	3,000	tcs. lard	“	“	1030
28,	“	1,250	“	“	“	1030
28,	“	750	“	“	“	1032½
29,	“	1,500	b'r'ls pork	“	“	1707½
29,	“	500	“	“	“	1710

And—

Dec. 28, 1882.	Bought	1,000	b'r'ls pork	for March	delivery	1732½
28,	“	750	“	“	“	1730
28,	“	1,250	“	“	“	1725
28,	“	4,750	tcs. lard	“	“	1052½
28,	“	250	“	“	“	1050
29,	“	1,750	b'r'ls pork	“	“	1740
29,	“	250	“	“	“	1742½

43 The regular charges on the board of trade for changing the delivery of property from one month to a future month by a sale and repurchase or extension are storage, insurance, inspection, and interest on the money invested, commonly called "carrying charges." These carrying charges on the McCrea purchase were included in the price paid for the March stuff, as shown above.

The following statement will show of whom the property bought for January delivery was received or offset with; also to whom the property sold for January delivery was delivered to or offset with:

No. 3.—*Pork—January—Bought.*

Date of purchase.	Quantity and price.	Parties from whom bought, and address.	Date of offset or delivery.	Parties with whom offset or delivery was made.	Date of contract with them.	Quantity and price.
1882.			1882.		1882.	
Sept. 12	250 b'r'ls, 81.27½..	Stiles, Goldy & McMahon, 133 La Salle St......	Sept. 15	Stiles, Goldy & McMahon, 133 La Salle street	Sept. 15	250 b'r'ls, 18.55
"	" 18.30 ..	R. W. Roloson, cor. Washington & La Salle St.....	14	Schmitte & Spencer. (Gone out of business)	July 20	" 20.17½
"	" "	Allerton Packing Co., 159 La Salle St.....................	Oct. 3	S. H. Richardson & Co., do.	Sept. 27	" 18.75
"	" "	Do. do. do.	Nov'r 3	G. Stewart & Co., 84 La Salle St	Nov'r 2	" 18.65
13	" 18.62½..	J. H. Lowry & Co., 125 La Salle St........................	Dec'r 1	Sherman, French & Co. (Gone out of business)..	25	" 17.00
"	" 18.60 ..	M. Nelson & Co., 122 La Salle St.....	30	C. Counselman & Co., 122 La Salle St...................	Dec'r 29	" "
"	" "	John Gaynor, 185 La Salle St	Sept. 15	N. B. Ream & Co., 159 "	Sept. 14	" 18.67½
"	" 18.57½..	E. B. Stevens, 170 Washington St......	18	G. D. Baldwin & Co., Chamber of Commerce.........	16	" 18.70
18	" 18.90 ..	W. T. Baker & Co., Chamber of Commerce.........	Nov'r 14	W. T. Baker & Co., do.	Nov'r 14	" 17.47½
"	" "	Wm. Young & Co., 121 La Salle St.........................	Sept. 21	A. C. Helenholz, 156 Washington St.....................	Sept. 16	" 18.75
"	" "	Do. do.	25	W. Young & Co., 121 La Salle St...........................	25	" 18.95
"	" "	McDermid, Russ & Co., Chamber of Commerce...	Nov'r 22	Dwight & Gillette, 96 "	Nov'r 21	" 17.15
25	" 18.97½..	Chicago Packing & Prov. Co., 191 La Salle St......	Oct. 2	Chicago Pack'g & P. C., 191 "	Oct. 2	" 19.00
"	" "	Do. do.	"	do.	"	" "
"	" "	Do. do.	"	do.	"	" "
"	" "	G. Stewart & Co., 84 La Salle St..............................	9	Sam'l Dally, 163 Washington St............	Sept. 18	" 18.80
Oct. 3	" 19.17½..	John Gaynor, 185 La Salle St......................	6	John Gaynor, 171 do.	Oct. 6	" 19.45
"	" "	Murphy Packing Co., 153 Monroe St........................	3	B. F. Murphy Pack'g Co., 153 Monroe St...............	3	" 19.12½
"	" "	Sherman, French & Co. (Gone out of business)...	28	B. Daveoport & Co., 167 Washington St..................	27	" 18.87½
"	" "	Chicago Packing & Prov. Co., 191 La Salle St......	9	Wm. Young & Co., 121 La Salle St......	7	" 19.22½

Payments made by offset or cheque.

45

4.—*Lard—January—Bought.*

Date of purchase.	Quantity and price.	Parties from whom bought, and address.	Date of off-et or delivery.	Parties with whom offset or delivery made.	Date of contract with them.	Quantity and price.
1882.			1882.		1882.	
Sept. 13	250 tcs., 11.27½...	W. B. Williams, 162 Washington St	Oct. 4	Davis, Atkinson & Co., 169 Washington St	July 6	250 tcs., 12.95
"	" 11.25 ...	Cudaley & Stevens, 161 "	Nov'r 2	Cudaley & Stevens 161 "	Nov'r 2	" 11.12½
"	" " ...	" " "		G. D. Baldwin & Co., Chamber of Commerce	Oct. 27	" 11.20
			1883.		1883.	
"	" " ...	" Delivered to us. "N."	Jan'y 2	Wm. Kirkwood, 120 La Salle St. Delivered	Jan'ry 2	" 10.40
			1882.		1882.	
18	" 11.50 ...	R. H. LeBaugh. (Gone out of business)	Oct. 30	McGeoch, Everingham & Co., Times building	Oct. 27	" 11.17½
"	" " ...	Boyd, Lunham & Co., 159 La Salle St	Sept. 28	Gregg, Son & Co., 126 Washington St	Sept. 26	" 11.40
"	" " ...	H. Botsford & Co., " "	Oct. 6	W. C. Duell & Co., Chamber of Commerce	Oct. 5	" 11.65
"	" " ...	Boyd, Lundham & Co. " "	Sept. 30	W. Dewar & Co. (Gone out of business)	Sept. 26	" 11.37½
"	" 11.45 ...	R. H. Roloson, 145 Washington St	Oct. 6	E. W. Bailey & Co., 160 Washington St	Oct. 5	" 11.65
"	" " ...	" " "	25	Poole, Kent & Co., 114 La Salle St	24	" 11.10
"	" " ...	" " "	"	do. do.	"	" "
"	" " ...	" " "	27	R. W. Roloson, 145 Washington St	27	" 11.15
25	" 11.57½...	B. P. Hutchinson, 94 Sa Salle St	31	Saul Dally, 121 La Salle St	"	" 11.20
"	" " ...	" " "	"	R. W. Roloson, 145 Washington St	"	" 11.15
"	" 11.60 ...	" " "	"	B. R. Hutchinson, 94 La Salle St	31	" 11.10
"	" " ...	" " "	"	do. do.	"	" 11.10
Oct. 3	" 11.55 ...	H. Memory, 126 Washington St	3	H. Memory & Co., 126 Washington St	26	" 11.40
"	" " ...	G. C. Ball & Co., 161 "	27	Allerton Packing Co., 159 La Salle St	"	" 11.10
"	" 11.57½...	G. D. Baldwin & Co., Chamber of Commerce	"	do. do.	"	" 11.10
"	" " ...	" "	"	do. do.	"	" 11.12½

Payments made by offset or cheque.

No. 5.—*Pork—January—Sold.*

Date of sale.	Quantity and price.	Parties to whom sold and address.	Date of offset or delivery.	Parties with whom offset*t* or delivery was made.	Date of contract with them.	Quantity and price.
1882. Dec'r 28	250 b'r'ls, 17.02½..	Chicago Packing & Provision Co., 191 La Salle St.	1882. Dec'r 29	J. F. Crosby, 157 Washington St.	1882. Oct. 31	250 b'r'ls, 18.55
" "	" " ...	Jackson Bros., 145 La Salle St. "W." Delivered	1883. Jan'ry 2	A. M. Henderson, 191 La Salle St. Delivered	Dec'r 18	" 18.65
" "	" " ...	McGeoch, Everingham & Co., Times Building	1882. Dec'r 29	L. Everingham & Co., 123 "	22	" 17.10
" "	" " ...	Do. do. "N." Delivered	1883. Jan'ry 2	P. P. Oldershaw & Co., 122 " Delivered	9	" 17.57½
" "	" 17.00 ...	Sherman, French & Co., Times Building	1882. Dec'r 29	Smith, McCormack & Co., 128 "	Sept. 14	" 18.65
" "	" " ...	C. Counselman & Co., 121 La Salle St	"	G. W. Higgins & Co., 123 "	Dec'r "	" 14.42½
" "	" " ...	John Gaynor, 185 La Salle St	"	J. H. Lowry & Co., 125 "	Nov'r 22	" 16.85
" "	" 16.95 ...	Chicago Packing & P. Co., 191 La Salle St.	"	W. P. Tuttle & Co., 84 "	Dec'r 8	" 17.82½
" "	" " ...	Do. do.	"	Stiles, Goldy & McMahon, 129 "	4	" 17.35
" "	" " ..	J. P. Taylor. Gone out of business	28	J. P. Taylor. (Gone out of business.)	28	" 16.95
" "	" " ...	H. Memory, 126 Washington St	29	Dwight & Gillette, 94 La Salle St	1	" 17.40
" "	" " ...	Do. do.	"	Wm. Kirkwood, 122 La Salle St	"	" 17.30
" 29	" 17.07½..	P. W. Roloson, 145 Washington St	30	Brosseau, Booth & Co. Gone out of business	19	" 17.22½
" "	" " ...	Do. do. "W." Delivered	1883. Jan'ry 2	E. Seckell & Co., 126 Washington St. Delivered..	Oct. 4	" 18.45
" "	" " ...	C. Counselman & Co., 121 La Salle St	1882. Dec'r 30	Wheeler, Gregory & Co., "	Dec'r 10	" 17.40
" "	" " ...	Do. do. "W." Delivered	1883. Jan'ry 2	Holden & Co., 110 La Salle St. Delivered.	Dec'r 30	" 17.17½
" "	" " ...	Do. do. "W." do. ...	"	M. D. Stevens, 171 Washington St. Do.	Sept. 13	" 18.62½
" "	" " ...	Do. do. "N." do. ...	"	J. P. Taylor. Gone out of business. Do.	Nov'r 22	" 18.52½
" "	" 17.10 ...	R. W. Roloson, 145 Washington St. "W." do. ...	"	Foss, Strong & Co., 171 Washington St. Delivered.	Oct. 4	" 18.72½
" "	" " ...	W. H. Silberhorn, 114 La Salle St. "W." do. ...	"	J. F. Crosby, 157 Washington St. Do. ...	31	" 18.55

Payments by offset or cheque.

No. 6.—*January—Lard—Sold.*

Date of sale.	Quantity and price.	Parties to whom sold, and address.	Date of setoff or delivery.	Parties with whom offset*t* or delivery was made.	Date of contract with them.	Quantity and price.
1882. Dec'r 28	250 tes., 10.30	Fowler Bros., 123 La Salle St	1882. Dec'r 29	M. S. Nichols & Co., 135 La Salle St	1882. Nov. 21	250 tes., 10.55
"	" "	Do.	30	W. Kirkwood & Co., 122 "	25	" 10.50
"	" "	Do. "W." Delivered	1883. Jan'ry 3	Boyd, Lunham & Co., 159 La Salle St. Delivered.	1883. Jan'ry 2	" 10.37½
"	" "	Do. "W" do.	10	G. W. Higgins & Co., 123 La Salle St. do.	"	" 10.40
"	" "	Do.	1882. Dec'r 29	M. S. Nichols & Co., 135 La Salle St	'82, Nov. 21	" 10.55
"	" "	Do.	"	B. P. Hutchinson & Co., 96 La Salle St	17	" 10.77½
"	" "	Do.	"	Wm. Young & Co., 121 La Salle St	24	" 10.52½
"	" "	Do.	"	J. P. Taylor. (Gone out of business.)	Dec'r 29	" 10.35
"	" "	Do.	"	Fowler Bros., 123 La Salle St	"	" 10.30
"	" "	Do.	"	" "	"	" "
"	" "	Do.	30	A. H. Bliss & Co., 159 La Salle St	8	" 10.77½
"	" "	Do.	"	W. Kirkwood & Co., 122 La Salle St	4	" 10.65
"	" "	Chicago Pack'g & P. Co., 191 La Salle St	28	Chicago Pack'g & P. Co., 191 La Salle St	Nov'r 21	" 10.45
"	" "	Do. do.	29	G. D. Baldwin & Co., Chamber of Commerce	27	" 10.32½
"	" "	Do. do.	"	" " "	Dec'r 18	" 10.25
"	" "	Do. do.	"	" " "	"	" 10.27½
"	" 10.32½	Sibley, French & Co. Gone out of business	"	N. B. Ream & Co. Gone out of business.	Nov'r 21	" 10.45
"	" "	Van Inwagen & Hamill do.	"	" " "	"	" "
"	" 10.30	Sibley, French & Co. do. "N." Delivered	1883. Jan'ry 2	M. S. Nichols & Co., 135 La Salle St. Delivered	"	" 10.47½
"	" 10.32½	W. P. Harvey & Co., 86 La Salle St	1884. Dec'r 29	J. B. Rogan, 84 La Salle St	22	" 10.80

Payments by offset or cheque.

48 Like other houses dealing on 'change we had a great many purchases of pork and lard on one side and sales of pork and lard on the other maturing in January and in other months. This was all of standard grade, such as we bought for McCrea.

To simplify the accounts and for the convenience of trade we keep our accounts like those of an elevator, which is approved by the rules of the board of trade; that is, we keep all our purchases in one account and all our sales on the other side of it. We were compelled at all times to have on hand, or coming in at the time specified in the contract, the exact kinds and amounts of property which we had purchased for our customers. If we had failed to do so we would have been liable to expulsion from the board of trade, as the business is done on 'change. We cannot make any distinction between the lard and pork of different customers when it is of the same grade and quality no more than an elevator does between the grain of different customers. When a delivery is due a party entitled to it gets exactly the kind of property he bought.

McCrea's losses on the pork and lard were paid by us, either to the parties from whom we bought the property or to the parties who had succeeded to their rights under the rules of the board of trade.

McCrea, or any other purchaser like him, has nothing to do with those parties. The members of the board are responsible to their customers for the fulfilment of all contracts made for them by their orders. If any party with whom they deal fails they are obliged, under the rules of the board of trade, to make the contract good to the customer.

49 It is very easy to specify the parties from whom we received money on contracts, but almost impossible to trace the distribution of money received on losses, because in many cases a loss is transferred from one party to another and adjusted by offsets in whole or in part. To avoid the absurdity of having perhaps twenty different parties pay us the same amount in money and we pay it out again to as many different parties, what are called offsets are made. It is like twenty different parties, having dealings in the same grade of goods and arranging through a common agent so that one payment shall be a settlement for all—just as in the clearing house, where each bank sends all the checks it has against every other — and pays only the difference between the checks for and against them. All payments and collections on the offsets and deliveries are charged or credited in the first instance to the property ac., pork by itself and lard by itself, and the item is carried to the individual ac. only when the settlement is made. The January property was sold at the market price with the loss above stated to the parties above named, those parties paying for it either by offsets or cash on delivery. The above offsets were made as follows: The sale of the January property being at the market price and not being paid for except down to the market price—that is, to the amount of the losses above shown—we did not receive the pay for it when we sold it, but transferred the sale contract to the purchaser

subject to the balance of the purchase price, to be actually paid by the substituted party when the property was delivered to him. This is why we do not show in our ac's the payments on the January sales; for neither we nor McCrea had any further interest in them, both of us having been discharged by the transfer from all
50 further liability on those contracts; if the property had not been sold out or offset, as above, we would have been compelled to receive it and pay for it under penalty of expulsion from the board of trade.

51 Feb'y 23 & 24, 1883, we received orders from Jas. McCrea by telegraph to change his property bought for March delivery to June delivery, which we did by selling the March property and buying the same amount of property for June delivery, as follows:

Feb'y 23.	Sold	1,000	bbls. pork	for March delivery, C	18.20
23.	"	2,000	tcs. lard	do.	11.50
24.	"	1,500	do.	do.	11.50
24.	"	1,500	do.	do.	11.47½
24.	"	1,500	bbls. pork	do.	18.20
24.	"	500	do.	do.	18.17½
24.	"	750	do.	do.	18.05
26.	"	1,000	do.	do.	18.07½
26.	"	250	do.	do.	18.10

And—

Feb'y 23.	Bought	1,000	bbls. pork	for June delivery, C	18.75
23.	"	2,000	tcs. lard	do.	11.82½
24.	"	1,500	do.	do.	11.77
24.	"	1,500	do.	do.	11.80
24.	"	1,250	bbls. pork	do.	18.77½
24.	"	750	do.	do.	18.80
24.	"	500	do.	do.	18.65
24.	"	250	do.	do.	18.67½
26.	"	250	do.	do.	18.67½
26.	"	1,000	do.	do.	18.65

The following statement will show of whom the property bought for March delivery was received, or offset; also, to whom the property sold for March delivery was delivered to, or offset with:

9.—*Pork Bought—March.*

Date of purchase.	Quantity & price.	Parties of whom bought, and address.	Date of offset or delivery.	Parties with whom offset or delivery was made.	Date of contract with them.	Amount & price.
1882. Dec. 28	250 bbls., 17.32½	G. W. Higgins & Co., 125 La Salle St	1883. Jan'y 8	Geo. Stewart & Co., 84 La Salle St	1883. Jan'y 6	250 bbls. 17.22½
"	" "	G. C. Ball & Co., 157 Washington St	4	J. M. Schwabacker. Out of business	3	" 17.22½
"	" "	Chicago P'k'g & Pro. Co., 195 La Salle St	30	Chicago P'k'g & Pro. Co., 195 La Salle St	30	" 17.62½
"	" "	Do. do. "W." Delivered	M'ch 1	Delivered to us and kept	M'ch 1	
"	" 17.30	Annum & Co., 157 Washington St	1882. Dec. 28	Armour & Co., 157 Washington St.	Sept. 29	" 18.80
"	" "	G. C. Ball & Co., 157 Do.	1883. Jan'y 15	W. Northrup & Co., 116 La Salle St	Jan'y 5	" 17.25
"	" "	Libby, French & Co. Out of business	26	C. W. Brega, 165 Washington St	25	" 17.50
"	" 17.25	G. W. Higgins, & Co, 125 La Salle St. "W." Delivered	M'ch 1	Dwight & Gillett, 96 La Salle St. Delivered	Feb'y 23	" 18.20
"	" "	Do. do. "W." do.	"	Cudahy & Stevens, 161 Washington St. do.	27	" 18.15
"	" "	J. P. Taylor. Out of business	1882. Dec 28	J. P. Taylor. Out of business	1882. Dec. 28	" 17.25
"	" "	H. Memory, 126 Washington St	1883. Jan'y 10	H. Memory, 126 Washington St	1883. Jan'y 10	" 17.25
"	" "	Do. do.	"	Do. do.	10	" 17.25
29	" 17.40	R. W. Roloson, 145 do.	3	J. W. Ramsey & Co., 86 do.	2	" 17.30
"	" "	Do. do.	"	R. W. Rolson, 145 do.	3	" 17.20
"	" "	C. Counselman & Co., 122 La Salle St. "W." Delivered	M'ch 1	Delivered to us and kept	M'ch 1	
"	" "	Do. do. "W." Delivered	1	Jones & Raymond, Chamber of Com. Delivered.	M'ch 1	" 18.00
"	" "	Do. do. "N." do.	1	John Sinclair. Out of business. do.	1882. Dec. 8	" 17.97½
"	" "	Do. do. " " do.	1	P. B. Weare & Co., 100 So. Water St. do.	1883. M'ch 1	" 18.07
"	" "	G. D. Baldwin & Co., Chamber of Commerce	Jan'y 3	H. D, Warner & Co., 123 La Salle St	Jan'y 2	" 17.27½
"	" 17.42½	R. W. Roloson, 145 Washington St	"	R. W. Roloson, 145 Washington St	3	" 17.20

Payments made by offset or check.

10—*Lard—March—Bought.*

Date of purchase.	Quantity & price.	Parties of whom bought and address.	Date of offset or delivery.	Parties with whom offset or delivery was made.	Date of contract with them.	Amount & price.
1882.			1882.		1882	
Dec. 28	250 tcs., 10.52½...	Fowler Bros., 123 La Salle St.	Dec. 29	Fowler Bros., 123 La Salle St.	Nov. 29	250 tcs., 10.52½
"	" " ...	Do. do.	"	Do. do.	29	" 10.52½
"	" " ...	Do. do.	1883.		1883.	
"	" " ...	Do. do.	Jan'y 5	Holden & Co., 110 do.	Jan'y 4	" 10.47½
"	" " ...	Do. do.	Feb'y 24	Fowler Bros., 123 do.	Feb. 24	" 11.50
"	" " ...	Do. do.	"	Do. 123 do.	24	" 11.50
"	" " ...	Do. do. "N." Delivered ...	27	Do. 123 do.	27	" 11.42
"	" " ...	Do. do. "N." do. ...	M'ch 2	B. P. Hutchinson & Co., 94 do. Delivered. ..	23	" 11.50
"	" " ...	Do. do. "N." do. ...	2	Do. 94 do. do. ..	23	" 11.50
"	" " ...	Do. do. "N." do. ...	"	W. T. Baker & Co., Chamber of Commerce. do. ..	M'ch 1	" 11.47½
"	" " ...	Do. do. "N." do. ...	"	Do. do. do. ..	1	" 11.47½
"	" " ...	Do. do.	"	W. Bush & Co., 181 Washington St. do. ..	1	" 11.50
29	" " ...	Chicago P'k'g & Pro. Co., 195 La Salle St.	22	J. Morell & Co., 156 do.	21	" 11.15
"	" " ...	Chicago P'k'g & Pro. Co., do.	Jan'y 5	Holden & Co., 110 La Salle St.	Jan'y 4	" 10.47½
"	" " ...	Do. do.	5	C. W. Brega, 165 Washington St	4	" 10.47½
"	" " ...	Do. do.	"	C. Counselman & Co., 120 La Salle St	3	" 10.45
"	" " ...	G. D. Baldwin & Co., Chamber of Commerce	31	Chicago P'k'g & Pro. Co., 195 do.	31	" 11.00
"	" " ...	Wm. Kirkwood, 120 La Salle St.	6	W. P. Harvey & Co., 84 do.	5	" 10.55
"	" 10.50 ...	Wm. Young & Co., 121 do.	17	Wm. Kirkwood, 120 do.	17	" 10.92½
"	" 10.52½...	W. R. Harvey & Co., 86 do.	9		1882.	
				P. B. Wear & Co, 100 So. Water St.	Dec. 29	" 10.60
			1882.			
			Dec. 30	Shepard & Taylor, 142 Randolph St.	29	" 10.62½

Payments made by offset or cheque.

11.—*Pork—March—Sold.*

Date of sale.	Quantity & price.	Parties to whom sold, and address.	Date of offset or delivery.	Parties with whom offset or delivery was made.	Date of contract with them.	Amount & price.
1883. Feb'y 23	250 bbls., 18.20	G. D. Baldwin & Co., Chamber of Commerce	1883. Feb. 23	G. D. Baldwin & Co., Chamber of Com	1883. Feb'y 7	250 bbls. 18.20
"	" "	Do. do.	23	Do. do.	7	" 18.27½
"	" "	Do. "W." do. Delivered.	M'ch 1	M. B. Crofts & Co., 116 Washington St. Delivered.	26	" 18.12½
"	" "	Do. "W." do do.	1	B. & C. I. Fowler, 164 do. do.	Jan'y 5	" 17.25
24	" "	Fitch & Phillips, 153 Monroe St.	Feb'y 27	Fitch & Phillips, 153 Monroe St.	Feb'y 27	" 18.10
"	" "	Do. do.	27	Do. 153 do	27	" 18.10
"	" "	Fowler Bros., 123 La Salle St.	24	Fowler Bros., 123 La Salle St.	1882. Nov. 14	" 17.75
"	" "	Do. do.	24	Do. do.	14	" 17.75
"	" "	Do. do.	24	Do. do.	1883. Jan'y 11	" 17.42
"	" "	Do. do.	24	Do. do.	Feb'y 8	" 18.00
"	" 18.17½	J. P. Taylor. Gone out of business.	24	J. P. Taylor. Gone out of business	24	" 18.17½
"	" "	Do. do.	24	Do. do.	24	" 18.17½
"	" 18.05	Underwood & Co., 2220 Halstead St.; office, Chamber of Commerce. "N." Delivered.	M'ch 1	Irwin, Orr & Co., Chamber of Commerce. Delivered.	28	" 18.20
"	" "	Do. do.	Feb'y 24	Underwood & Co., 2220 Halsted St.; office, Chamber of Commerce.	24	" 18.05
"	" "	Fowler Bros., 123 La Salle St	24	Fowler Bros., 123 La Salle St	8	" 18.00
26	" 18.10	John Gamyer, 185 do.	M'ch 1	John Gayner, 185 do.	M'ch 1	" 18.30
"	" 18.07½	G. W. Stewert & Co., 84 do.	Feb. 26	G. W. Stewart & Co., 84 do.	Feb'y 26	" 18.07½
"	" "	Do. 84 do.	26	Do. do.	26	" 18.07½
"	" "	Do. 84 do.	26	Do. do.	26	" 18.07½
"	" "	Do. 84 do.	26	Do. do.	26	" 18.07½

Payments made by offset or cheque.

12.—*Lard—March—Sold.*

Date of sale.	Quantity & price.	Parties to whom sold, and address.	Date of offset or delivery.	Parties with whom offset or deliveries *was* made.	Date of contract with them.	Amount & price.
1882. Feb. 23	250 tcs., 11.50 ...	B. P. Hutchinson & Co., 94 La Salle St. "W." Delivered.	1883. M'ch 1	M. S. Nichols & Co., 135 La Salle St. Delivered...	1883. Feb. 6	250 tcs., 11.47½
"	" 11.50 ...	B. P. Hutchinson & Co., 94 La Salle St. "W." do...	1	McHenry, Reese & Co. Out of business. do. ..	7	" 11.35
"	" 11.50 ...	Do. do. do. "N." do...	1	W. Northrup & Co., 112 La Salle St. do. ...	28	" 11.47½
"	" 11.50 ...	Do. do. do. "N." do...	1	Fowler Bros., 123 do. do. ...	Jan. 17	" 10.87½
"	" 11.50 ...	Do. do. do. "N." do...	1	Irwin, Orr & Co., Chamber of Com. do. ...	Feb. 8	" 11.32½
"	" 11.50 ...	Do. do. do. "W." do...	2	Jones & Raymond, do. do. ...	26	" 11.40
"	" 11.50 ...	Do. do. do. "N." do...	"	Fowler Brothers, 123 La Salle St. do. ...	1882. Dec. 28	" 10.52½
"	" 11.50 ...	Do. do. do. "N" do...	"	Do. do. do. ...	28	" 10.52½
24	" 11.50 ...	Armour & Co., 150 Washington St. "N." Delivered	1	J. B. Rogan, 86 La Salle St. do. ...	1883. Feb. 6	" 11.50
"	" 11.50 ...	Fowler Bros., 123 La Salle St	Feb. 24	Fowler Bros., 123 La Salle St........	28	" 10.52½
"	" 11.50 ...	Do. do.	"	Do. do.	28	" 10.52½
"	" 11.47½...	M. S. Nichols & Co,, 135 La Salle St........	"	M. S. Nichols & Co., 135 La Salle St	Jan. 20	" 10.85
"	" 11.47½...	G. D. Baldwin & Co., Chamber of Commerce	"	G. D. Baldwin & Co.. Chamber of Com........	Feb. 12	" 11.17½
"	" 11.47½...	Armour & Co., 159 Washington St........	M'ch 1	Armour & Co., 159 Washington St........	M'ch 1	" 11.47½
"	" 11.47½...	Do. do.	"	Do. do.	"	" 11.47¼
"	" 11.47½...	C. Counselman & Co., 122 La Salle St. "N." Delivered	2	Mead, Beach & Co., Chamber of Com. Delivered.	Jan. 20	" 10.90
"	" 11.47½...	B. P. Hutchinson & Co., 94 La Salle St. "W." do.	3	Chicago P'k'g & Pro. Co., 190 La Salle St. do.	M'ch 2	" 11.40
"	" 11.50 ...	H. Memory, 126 Washington St	Feb. 27	H. Memory, 126 Washington St........	Feb. 26	" 11.50
"	" 11.50 ...	Do. do.	27	Do. do.	"	" 11.50
"	" 11.50 ...	Do. do. "N." Delivered.	M'ch 2	Dwight & Gillett, 86 La Salle St. Delivered........	6	" 11.37½

Payments made by offset or cheque.

56 On May 7 & 8, 1883, we received orders by telegraph from James McCrea to sell the property we had bought for June delivery, which we did, as follows:

May 7.	Sold	1,000	bbls. pork	for June delivery, C	20.17½
7.	"	1,000	do.	do.	20.15
8.	"	1,000	do.	do.	20.17½
8.	"	500	do.	do.	20.15
8.	"	1,500	do.	do.	20.05
7.	"	1,250	tcs. lard	do.	12.12½
7.	"	750	do.	do.	12.10
8.	"	2,750	do.	do.	12.10
"	"	250	do.	do.	12.05

The following statement will show of whom the property bought for June delivery was received, or offset with; also, to whom the property sold for June delivery was delivered to, or offset with:

57

14.—*Pork—June—Bought.*

Date of purchase.	Quantity & price.	Parties of whom bo't and address.	Date of offset or delivery.	Parties with whom offsets or deliveries was made.	Dates of contracts made with them.	Amount & price.
1883.			1883.		1883.	
Feb. 23	250 bbls., 18.75	Fowler Bros., 123 La Salle St	Feb. 23	Fowler Bros., 123 La Salle St	Feb. 23	250 B., 18.75
"	" "	Do. do.	"	Do. do.	"	" "
"	" "	Do. do.	"	Do. do.	"	" "
"	" "	Do. do.	"	Do. do.	"	" "
24	" 18.77½	John Gayner, 185 La Salle St	M'ch 6	Irwin, Orr & Co., Chamber of Commerce	28	" 18.85
"	" "	Do. do.	31	Wm. Young & Co., 121 La Salle St	M'ch 29	" 18.55
"	" "	Do. do.	Ap'l 11	Holden & Co., 110 do.	Ap'l 10	" 18.20
"	" 18.80	Do. do.	Feb. 26	G. C. Ball & Co., 161 Washington St	Feb. 15	" 18.62½
"	" 18.80	Do. do.	26	Do. do.	15	" 18.62½
"	" "	Do. do.	29	Wm. Young & Co., 121 La Salle St	23	" 18.80
"	" 18.77½	H. Memory, 126 Washington St	M'ch 22	H. Memory & Co., 126 Washington St	M'ch 22	" 18.47½
"	" 18.77½	Do. do.	22	Do. do.	22	" 18.47½
"	" 18.65	Do. do.	Feb. 26	Sibley, French & Co. Out of business	Feb. 5	" 18.72
"	" 18.65	Do. do.	29	A. Geddes, 120 La Salle St	27	" 18.62½
"	" 18.67½	J. Gayner, 185 La Salle St	Ap'l 13	J. Gayner, 185 do.	Ap'l 13	" 18.20
26	" 18.67½	A. H. Hovey & Co , 84 La Salle St	May 10	H. D. Warner & Co., 123 La Salle St	May 8	" 20.22½
"	" 18.65	Geo. Stewart & Co., 84 do.	Feb. 26	Geo. Stewart & Co., 84 do.	Feb. 26	" 18.65
"	" "	Do. do.	26	Do. do.	26	" "
"	" "	Do. do.	26	Do. do.	26	" "
"	" "	Do, do.	26	Do. do.	26	" "

Payments made by offset or cheque.

15.—*Lard Bought—June.*

Date of purchase.	Quantity & Price.	Parties from whom bo't & address.	Date of offset or delivery.	Parties with whom offsets or deliveries were made.	Date of contracts made with them.	Amount & price.
1883.			1883.		1883.	
Feb. 23	250 tcs., 11.82½...	R. Warren & Co., 132 La Salle St.	Ap'l 19	H. Memory, 126 Washington St.	Ap'l 17	250 T., 11.52½.
"	" " ...	H. Memory & Co., 126 Washington St	M'ch 2	W. H. Harvey & Co., 86 La Salle St.	Jan'y 22	" 11.22½
"	" " ...	M. S. Nichols & Co., 135 La Salle St	19	M. S. Nichols & Co., 135 do.	M'ch 17	" 11.52½.
"	" " ...	Do. do.	Ap'l 23	Do. do.	Ap'l 23	" 11.77½.
"	" " ...	H. Memory & Co., 126 Washington St	M'ch 3	Blair & Blair, Chamber of Commerce	Feb. 28	" 11.80.
"	" " ...	Do. do.	3	H. Memory, 126 Washington St	M'ch 3	" 11.82½.
"	" " ...	R. Warren & Co., 132 La Salle St.	Ap'l 19	Do. do.	Ap'l 17	" 11.55.
"	" " ...	J. P. Taylor. Out of business	Febr'y 23	J. P. Taylor. Out of business	Feb. 23	" 11.82½.
24	" 11.80 ...	G. C. Ball & Co., 161 Washington St.	M'ch 6	H. P. Wadams, Chamber of Commerce	M'ch 3	" 11.62½.
"	" " ...	Fowler Bros., 123 La Salle St.	June 1	F. G. Logan & Co., 126 Washington St.	Ap'l 23	" 11.87½.
"	" " ...	Do. do. "W." Delivered.	6	McGeough, Everingham & Co., Times Building. Delivered.	May 4	" 11.82½.
"	" 11.77½...	Stevaneman & Co., 110 do.	M'ch 7	Dwight & Gillett, 94 La Salle St.	M'ch 6	" 11.52½.
"	" " ...	Do. 110 do.	12	J. T. Tester & Co., Chamber of Commerce	10	" 11.67½.
"	" " ...	Warren & Co., 116 do.	20	R. W. Roloson, 145 Washington St.	16	" 11.60.
"	" " ...	Do. 116 do.	Ap'l 14	A. H. Bliss & Co., 157 La Salle St.	Ap'l 14	" 11.42½.
"	" " ...	Davis, Atkinson & Co., 163 Washington St.	M'ch 7	Davis, Atkinson & Co., 1630 Washington St.	M'ch 7	" 11.52½.
"	" " ...	Do. do.	7	Do. 1631, 165 Washington	"	" 11.52½.
"	" 11.80 ...	H. Memory, 126 Washington St	3	W. B. Williams, 162 Washington St.	2	" 11.65.
"	" " ...	Do. do.	5	Tabor & Nelson, 157 & 159 La Salle St.	3	" 11.65.
"	" " ...	Do. do.	6	Wm. Young & Co., 121 La Salle St.	5	" 11.62½.

Payments made by offset or cheque.

16.—*Pork—June—Sold.*

Date of sale.		Quantity & price.	Parties to whom sold, and address.	Dates of setoffs or deliveries.		Parties with whom offsets or deliveries were made.	Date of contract with them.		Amount & price.
1883.				1883.			1883.		
May	7	250 bbls., 20.17½	J. P. Taylor. Out of business	May	7	J. P. Taylor Out of business	May	7	250 B., 20.17½
"	"	" "	Do. do.		"	Do. do.		"	" "
"	"	" "	Do. do.		"	Do. do.		"	" "
"	"	" "	Do. do.		"	Do. do.		"	" "
"	"	" 20.15	Do. do.		"	Do. do.		"	" 20.15
"	"	" "	Do. do.		"	Do. do.		"	" "
"	"	" "	Do. do.		"	Do. do.		"	" "
"	"	" "	Do. do.		"	Do. do.		"	" "
"	8	" 20.17½	Baldwin & Stone, 126 Washington St		11	G. W. Higgins & Co, 123 La Salle St	Ap'l	19	" 18.70
"	"	" "	Do. do.		12	M. S. Nichols & Co., 135 do.		30	" 19.52½
"	"	" "	Do. do.		12	Shieneman & Co. 110 do.	May	11	" 19.95
"	"	" "	Do. do.		15	G. C. Ball & Co., 161 Washington St		12	" 20.07½
"	"	" 20.15	Holden & Co., 110 La Salle St		8	Holden & Co., 110 La Salle St		3	" 19.55
"	"	" "	Do. do.		8	Do. do.		3	" 19.55
"	"	" 20.05	Geo. Stewart & Co., 84 do.		9	G. W. Brega & Co., 16 Washington St		2	" 19.50
"	"	" "	Do. do.		10	D. T. Denton & Co. Out of business	M'ch	13	" 19.52½
"	"	" "	Do. do.		11	G. W. Higgins & Co., 123 La Salle St	Ap'l	19	" 18.70
"	"	" "	Do. do.		11	Shieneman & Co., 110 do.	May	10	" 20.15
"	"	" "	Armour & Co., 159 Washington St		9	Armour & Co., 159 Washington St		9	" 20.05
"	"	" "	Do. do.		10	J. P. Taylor. Out of business	Ap'l	30	" 19.65

Payments made by offset or cheque.

17.—*Lard—June—Sold.*

Date of sale.		Quantity & price.	Parties to whom sold, & address.	Date of offset or delivery.		Parties with whom offset or deliveries were made.	Dates of contracts with them.		Amount & price.
				1883.			1883.		
May	7	250 tes., 12.12½	Gabain & Co., 156 Washington St	May	8	B. P. Hutchinson & Co., 84 La Salle St	May	1	250 tes., 11.82½
"	"	"	Do. do.		7	Gabain & Co., 156 Washington St	Ap'l	23	" 11.85
"	"	"	Do. do.		8	Wm. Kirkwood, 110 La Salle St		14	" 11.45
"	"	"	Do. do.		"	N. K. Fairbanks & Co., cor. Wabash Ave. & Randolph St.		28	" 11.75
"	"	"	Do. do.		"	do. do.		30	" 11 80
"	"	" 12.10	N. K. Fairbanks & Co., cor. Wabash Av. & Randolph St.		7	do. do.		6	" 11.42½
"	"	"	Do. do.		"	do. do.	M'ch	30	" 11.60
"	"	"	Gabain & Co., 156 Washington St		"	Gabain & Co., 156 Washington St	Ap'l	12	" 11.45
"	8	"	N. K. Fairbanks & Co., cor. Wabash Av. & Randolph		8	N. K. Fairbanks & Co., cor. Wabash Av. & Randolph St.		28	" 11.75
"	"	"	Do. do.		9	E B. Stevens & Co., 168 Washington St		20	" 11.67½
"	"	"	Culver & Co., 126 Washington St		8	Culver & Co., 126 do.	M'ch	31	" 11.57½
"	"	"	Do. do.		"	do. do.	Ap'l	14	" 11.37½
"	"	"	Do. do.		"	do. do.	May	1	" 11.02½
"	"	"	Do. do.		"	do. do.		"	" 11.85
"	"	"	G. C. Ball & Co., 161 do.		9	G. C. Ball & Co., 161 do.		5	" 11.97½
"	"	"	Davis, Atkinson & Co., 163 Washington St		"	W. H. Sieberhow, 114 La Salle St		3	" 11.77½
"	"	"	J. T. Lester & Co., Chamber of Commerce		"	J. C. Ferguson & Co., 163 Washington St	Ap'l	2	" 11.60
"	"	"	Do do.		16	M. S. Nichols & Co., 135 La Salle St	May	2	" 11.80
"	"	" 12.05	G. W. Stewart & Co., 84 La Salle St		9	J. H. Hurlburt & Co., 110 do.	Ap'l	7	" 11.37½
"	"	" 12.10	E. A. Driver & Co., 161 Washington St		9	J. C. Ferguson & Co., 167 Washington St	May	8	" 12 10

Payments made by offset or cheque.

61 Some of the deliveries were made by notice, as hereinafter fully explained; others by warehouse receipts. The deliveries by notice are marked "N," and the deliveries by warehouse receipt are marked "W." Both the notices and receipts passed from our hands and control when the transactions were closed.

The following is as full a statement of the delivery notices and warehouse receipts as we are now able to make, in answer to the questions on that subject:

26.—*Lard—January Deliveries—Bought.*

Date.	Quantity & price.		Parties from whom bought.	Date of delivery.		Parties to whom delivered.	Date of contracts with them.	Amount & price.	
1882. Sept. 13	250	1125	Cudahy & Stevens......	1883. Jan'ry 2	Mair & Dwight, delivery notice No. 48..................................	Wm. Kirkwood.............	1883. Jan'ry 2......	250	1040

Pork—January Deliveries—Sold.

			Parties to whom sold.			Parties from whom received.			
1882. Dec'r 28	*Brls.* 250	1702½	Jackson Bros...............	1883. Jan'ry 2	Anglo-American Pack'g & Prov. Co., warehouse C; brand, F. Clifton & Co.; lot O, dated Jan'ry 2, 1883.	A. M. Henderson...........	1882. Dec'r 18......	*Brls.* 250	1865
"	"	"	McGeoch, E., & Co......	"	Chas. Counselman & Co., delivery notice No. 7.....................	P. P. Oldershaw & Co.....	9......	"	1757½
29	"	1707½	R. W. Roloson............	"	H. Botsford & Co., warehouse A, receipt No. 114; brand, H. Botsford & Co.; lot 41, January 2, 1883.	E. Seckell & Co......	Oct. 4......	"	1845
"	"	"	C. Counselman & Co...	"	B. F. Murphey Pack'g Co., warehouse A, No. 981; brand, B. F. Murphey Pack'g Co.; lot 22, January 2, 1883.	Holden & Co..................	Dec'r 30......	"	1717½
"	"	"	" " ...	"	John Cudahy, warehouse No. 152; brand, John Cudahy; lot N N N, January 2, 1883.	M. D. Stevers..........	Sept. 13......	"	1862½
"	"	"	" " ...	"	Chas. Counselman & Co., delivery notice No. 5........	J. P. Taylor....................	Nov'r 22.....	"	1852½
"	"	1710	R. W. Roloson...........	"	B. F. Murphey Pack'g Co., warehouse A, No. 980; brand, B. F. Murphey Pack'g Co.; lot 14, January 2, 1883.	Foss, Strong & Co..........	Oct. 4......	"	1872½
"	"	"	W. H. Silberhorn.......	"	Anglo-American Pack'g & Prov. Co., No. 83, warehouse C, lot L; brand, F. Clifton & Co.; January 2, 1883.	Crosby & Co..................	31.....	"	1855

Lard—January Deliveries—Sold.

Date.	Quantity & price.	Parties to whom sold.	Date of delivery.		Parties from whom received.	Date of contracts with them.	Amount & price.
1882. Dec'r 28	*Tcs.* 250, 1030	Fowler Bros..............	1883. Jan'ry 3	Davies, Atkinson & Co., delivery notice No 21......................	Boyd, Lunham & Co	1883. Jan'ry 2......	250, 1037½
"	" "	do.	10	Chicago Dock Co., warehouse B, No. 3847; marked D brand; J. E. Booge & Co., January 10, 1883.	G. W. Higgins & Co.......	"......	" 1040
"	" "	Sibley, French & Co...	2	G. W. Higgins, delivery notice No. 2....................................	M. S. Nichols & Co.........	1882. Nov'r 21......	" 1047½

Pork—March Deliveries—Bought.

		Parties from whom bought.			Parties to whom delivered.		
1882, Dec'r 28	250, 1732½	Chicago Pack'g Co......	1883. M'ch 1	Allerton Packing Co., sheds No. 623; brand, Allerton Packing Co; marked G, Jan'ry 6, 1883.	Kept by us.		
"	" 1725	G. W. Higgins & Co.....	"	H. Botsford & Co., No. 178; brand, Henry Denny & Son; marked C, February 7, 1883.	Dwight & Gillette..........	Feb'ry23......	250, 1820
"	" "	G. W. Higgins & Co.....	"	G. W. Higgins & Co., warehouse No. 1636; brand, G. W. Higgins & Co., lot F, January 2, 1883.	Cudahy & Stevers..........	27......	" 1815
29	" 1740	C. Counselman & Co...	"	Chicago Pack'g & Prov. Co., warehouse E, No. 286; brand, Chicago Pack'g & Prov. Co., lot 21, Nov'r 27, 1882.	Kept by us.		
"	" "	C. Counselman & Co...	"	Chicago Pack'g & Prov. Co, warehouse E, No. 311; brand, Chicago Pack'g & Prov. Co., lot 67, Jan'ry 2, 1883.	Jones & Raymond.........	M'ch 1......	" 1800
"	" "	C. Counselman & Co...	"	G. C. Ball & Co., delivery notice No. 1..................................	John Sinclair.....	Dec'r 8......	" 1797½
"	" "	C. Counselman & Co...	"	John W. Ramsey & Co., delivery notice No. 1	P. B. Weare & Co.	M'ch 1......	" 1807½

Lard—March Deliveries—Bought.

Dec'r 28	*Tcs.* 250, 1050½	Fowler Bros..............	M'ch 2	G. Stewart & Co., delivery notice No. 38..............................	B. P. Hutchinson & Co...	Feb'ry 23.....	250, 1150
"	" "	" "	"	B. P. Hutchinson & Co. " " 3..............................	" ...	".....	" "
"	" "	" "	"	G. Stewart & Co. " " 38..............................	W. T. Baker & Co..........	M'ch 1.....	" 4147½
"	" "	" "	"	Fowler Bros, " " 10..............................	"	".....	" "
"	" "	" "	"	" " " 10..............................	W. Busch & Co..............	".....	" 1150

28. *Pork—March Deliveries—Sold.*

Date.	Quantity & price.		Parties to whom sold.	Date of delivery.		Parties from whom received.	Date of contracts with them.	Amount & price.	
1883. Feb'ry 23	250	1820	G. D. Baldwin & Co......	Mc'h 1	H. Botsford & Co., No. 201; brand, H. Botsford & Co.; lot 112 March 1st, 1883..	M. B. Crafts & Co..........	Feb'ry 26......	250	1812½
"	"	"	" "	"	Allerton Packing Co., No. 623; brand, Allerton Packing Co.; marked G, January 6, 1883..	B. & C. J. Fowler	Jan'ry 5......	"	1725
24	"	1805	Underwood & Co......	"	A. M. Henderson, delivery notice No. 5..	Irwin, Orr & Co..........	Feb'ry 28......	"	1820

Lard—March Deliveries—Sold.

Date.	Quantity & price.		Parties to whom sold.	Date of delivery.		Parties from whom received.	Date of contracts with them.	Amount & price.	
Feb'ry 23	250	1150	B. P. Hutchinson & Co.	Mc'h 1	Anglo-American Pack'g & Prov. Co., No. 166; brand, J. Wright & Co.: lot (35) 10, March 1, 1883	M. S. Nichols & Co.........	Feb'ry 6......	250	1147½
"	"	"	"	"	Chicago Packing & Prov Co., No. 332; brand, T. J. Bigger & Co.; lot (B) 91, February 1st, 1883	McHenry, Rush & Co....	7......	"	1135
"	"	"	"	"	Armour & Co., delivery notice No. 11..	W. Northrop & Co	28......	"	1147½
"	"	"	"	"	Fowler Bros., " " 2........................	Fowler Bros.................	Jan'ry 17......	"	1087½
"	"	"	"	"	Fowler Bros., " " 6........................	Irwin, Orr & Co..........	Feb'ry 8......	"	1132½
"	"	"	"	2	Jones & Raymond, warehouse No. 275; brand, J. Dold & Son; marked G, March 2, 1883........................	Jones & Raymond.........	26......	"	1140
"	"	"	"	"	G. Stewart & Co., delivery notice No. 38........................	Fowler Bros.................	Dec'r 28......	"	1052½
"	"	"	"	"	B. P. Hutchinson & Co., " 3........................	"	"	"	"
24	"	"	Armour & Co...............	1	Fowler Bros., " 8........................	J. B. Rogan & Co............	Feb'ry 6......	"	1150
"	"	1147½	C. Counselman & Co...	2	G. Stewart & Co., " 38........................	Mead, Beach & Co.........	Jan'ry 20	"	1090
"	"	"	B. P. Hutchinson & Co.	3	Chicago Pack'g & Prov. Co., warehouse A, No. 345; brand, Chicago Pack'g & Prov. Co; lot 93, Mc'h 3, 1883..............	Chicago Pack'g Co.........	Mc'h 2	"	1140
"	"	1150	H. Memory & Co.........	2	Stiles, Goldy & McMahon's, delivery notice No. 1..............	Dwight & Gillette.........	Feb'ry 6....	"	1137½

Lard—June Deliveries—Bought.

			Parties from whom bought.			Parties to whom delivered.			
Feb'ry 24	250	1180	Fowler Bros..............	June 6	Anglo-American Pack'g & Prov. Co.; brand, J. Wright & Co.; lot (C) 27, June 6, 1883........................	McGeoch, E., & Co.........	May 4	250	1182½

65 The following ac. shows the cash investments of James McCrea in the above purchases, and the net results of the profit and loss to him up to May 10, 1883, leaving at that date a net balance in our hands of $1,895.00:

The following ac. was originally opened with A. J. McCrea, a brother of James McCrea, and afterwards transferred to James McCrea by agreement, as above stated:

66 *Statement of Account with James McCrea, Cleveland, O.—September, 13th, 1882, to May 10th, 1882.*

1882.				1882.			
Dec'r	28.	To Jan'ry pork	4,981 25	Sept.	13.	By cash	999 00
	“	“ lard	19,180 00		“	“	2,000 00
	29.	“ pork	4,087 50		18.	“	3,000 00
1883.					27.	“	1,000 00
Jan'ry	1.	“ balance p'r ac. ren'd	6,750 25		28.	“	1,000 00
				Oct.	7.	“	1,000 00
					11.	“	2,000 00
					21.	“	2,000 00
					23.	“	2,000 00
					24.	“	2,000 00
				Nov'r	8.	“	3,000 00
					11.	“	5,000 00
					20.	“	2,000 00
					21.	“	4,000 00
					22.	“	2,000 00
					29.	“	2,000 00
			34,999 00				34,999 00
				1883.			
Jan'ry	12.	To cash	6,000 00	Jan'ry	1.	By balance	6,750 25
	31.	“	6,877 10		2.	“ cash	2,000 00
					4.	“ “	4,126 85
			12,877 10				12,877 10
Febr'y	5.	To cash	6,000 00	Febr'y	23.	By M'ch pork	862 50
	28.	“ balance p'r ac. ren'd	12,806 25		“	“ lard	6,040 00
					24.	“ “	8,960 00
					“	“ pork	2,162 50
					26.	“ “	781 25
			18,806 25				18,806 25
April	24.	To cash	3,000 00	M'ch	1.	By balance	12,806 25
May	9.	“ “	12,000 00		20.	“ cash	3,000 00
	10.	“ “	10,000 00	May	7.	“ June lard	1,660 00
	“	“ bal., cr. for ac. ren'd	1,895 00		“	“ “ pork	2,700 00
					8.	“ “ lard	2,660 00
					“	“ “ pork	4,068 75
			26,895 00				26,895 00
				May	10.	By balance	$1,895 00

67 The following ac. shows the net profit realized by James McCrea on the foregoing transactions between September, 1882, & May 8, 1883:

Date			Date		
1882.			1883.		
Dec'r 28.	To pork, Jan'ry	4,981 25	Febr'y 23.	By pork, M'ch	862 50
"	" lard, "	19,180 00	"	" lard "	6,040 00
29.	" pork, "	4,087 50	24.	" " "	8,960 00
"	" net profit	1,646 25	"	" " "	2,162 50
			26.	" " "	781 25
			May 7.	" lard, June	1,660 00
			"	" pork, "	2,700 00
			8.	" lard, "	2,670 00
			"	" pork, "	4,068 75
		29,895 00			29,895 00
			May 8.	By net profit	$1,646 25

68 The following is a detailed account of the twenty-two (22) car-loads of property bought for James McCrea by Higgins & Gilbert, and shipped to Cleveland, O., as above stated:

Date			Date		
1881.			1881.		
Jan'ry 24	To 1 car, 20 ave. hams, 28,000 lb, @ 6¾	1,906 66	Jan'ry 24	By d'f't on A. J. McCrea	1,906 66
26	" 2 cars, 20 ave. hams, 56,000 lb, @ 6¾	3,813 33	"	" "	5,448 04
"	" 1 car, 20 ave. hams, 24,000 lb	1,634 71	28	" "	3,954 03
28	" 2 cars, 18 ave. hams, 56,000 lb	3,954 03	29	" "	1,977 01
"	" 1 car, 18 ave. hams	1,977 01	31	" "	1,977 01
31	" 1 " "	1,977 01	Feb'ry 1	" "	1,245 38
Feb'ry 1	" 1 " green sh'ld's	1,245 38	23	" "	2,258 41
23	" 1 " " hams	2,258 41	28	" "	2,258 31
28	" 1 " " "	2,258 41	M'ch 2	" "	6,775 25
M'ch 2	" 3 " " "	6,775 25	30	" "	2,286 55
30	" 1 " " "	2,286 55	April 6	" "	2,286 56
April 6	" 1 " " "	2,286 56	May 31	" "	1,385 62
May 31	" 1 " S. P. sh'ld's	1,385 62	June 23	" "	2,721 00
June 23	" 100 tcs. hams	2,721 00	July 6	" "	1,461 00
July 6	" 1 car sh'ld's	1,461 00	8	" "	1,212 25
8	" 50 tcs. hams	1,212 25	Aug't 11	" "	1,309 50
Aug't 10	" 1 car D. S. sh'ld's	1,309 50	Oct. 5	" "	2,063 25
Oct. 5	" " ribs	2,063 25		Error in draft, 28 Feb'ry	10
		42,525 93			42,525 93

69 The following is a full, true, and correct detailed statement of the pork and lard purchased by Higgins & Gilbert for James McCrea, on his orders, for delivery in August, 1883, with dates of purchase, quantities, names of sellers, prices, payments, deliveries, warehouse receipts, storage, sales, collections, and other particulars; showing, among other things, the following:

1. Amount in value of pork purchased		59,323 00	
Less storage not paid		1,050 00	
			58,273 00
2. Amount in value of lard purchased		118,622 05	
Less storage not paid		1,100 00	
			117,522 05
3. Commissions			450 00
			$176,245 05
CREDIT.			
4. Proceeds of sales of pork	40,098 00		
Less storage not collected	1,050 00		
		39,048 00	
5. Proceeds of sale of lard	86,759 08		
Less storage not collected, $1,100; & less error, 1.34	1,101 34		
		85,657 74	
			124,705 74
Balance		------	51,539 13
6. Balance in hand to Cr. J. McCrea May 18, 1883	1,895 00		
Cash advanced by him on the purchases	18 000 00		
		------	19,895 00
7. Final balance due Higgins and Gilbert, for which suit [is] brought		------	$31,644 31

70 The following are the addresses of the parties from whom we bought the property for Jas. McCrea for August delivery, as shown above :

Pork—August Delivery.

In lots 250 b'r'ls:		
G. C. Eldredge & Co.	19 50	122 La Salle St.
Do.	19 50	do.
Do.	19 50	do.
Do.	19 50	do.
Cudahy & Stevers	19 82½	161 Washington St.
J. P. Taylor	19 82½	Gone out of business.
W. H. Silberhorn	19 82½	116 La Salle St.
Cudahy & Stevers	19 82½	161 Washington St.
Blair & Blair	19 95	Chamber of Commerce.
Do.	19 95	do.
Do.	19 95	do.
Do.	19 95	do.

Lard—August Delivery.

In lots 250 tcs.:		
Fowler Bros.	11 77½	123 La Salle St.
Do.	11 77½	do.
G. C. Eldredge & Co.	11 77½	122 La Salle St.
Pool, Kent & Co.	11 85	116 La Salle St.
G. D. Baldwin & Co.	11 77½	Chamber of Commerce.
L. M. Studwell	11 85	162 Washington St.
G. C. Eldredge	11 85	122 La Salle St.
G. C. Eldredge	11 85	do.
Wm. Kirkwood	11 82½	do.
Do.	11 82½	do.
Do.	11 82½	do.
Do.	11 82½	do.

71

August—*Pork.*

Date of purchase.	Quantity.	Of whom bought.	Price.	Who paid on offsets or deliveries.	Date.	Cheques paid.	Cheques collected.
1883. May 19	250 b'r'ls.	G. C. Eldredge & Co.	1950				
		122 La Salle St.					
		Offset H. Memory	1947½	Paid H. Memory & Co.	May 24	6 25	
		Wm. Kirkwood	1942½				
		122 La Salle St.					
		Offset Chapin & Edwards	1910	" Chapin & Edwards	June 9	81 25	
		H. D. Warner & Co.	1910				
		123 La Salle St.					
		Offset Pope & Davis	1865	" H. D. Warner & Co.	13	112 50	
		Rumsey & Chandler	1870				
		123 La Salle St.					
		Offset Whyland & LeBagh	1810	" Whyland & LeBagh	19	150 00	
		Cudahy & Stevers	1815				
		161 Washington St.					
		Offset " "	1615	" Cudahy & Stevers	29	500 00	
		J. P. Taylor	1610				
		Out of business.					
		Offset G. W. Higgins & Co.	1617½	Collected G. W. Higgins & Co.	July 5	----------	18 75
		Bensley & Wagner	1610				
		133 La Salle St.					
		Offset Hamell & Congdon	1677½	" Bensley & Wagner	July 14, 15	----------	168 75
	250 b'r'ls.	Received from G. W. Higgins & Co.	1682½	Paid G. W. Higgins	Aug't 1	4,090 25	
		123 La Salle St.					
May 19	250 b'r'ls.	G. C. Eldredge & Co.	1950				
		122 La Salle St.					

			Offset do.	1985	Collected G. C. Eldredge & Co.	May 23		87 50
			Counselman & Co.	1967½				
			122 La Salle St.					
			Offset G. Stewart & Co.	1612½	Paid Counselman & Co.	July 6	887 50	
		250 b'r'ls.	Received from H. Botsford & Co.	1625	" H. Botsford & Co.	Aug't 1	3,961 50	
			159 La Salle St.					
May	19	250 b'r'ls.	G. C. Eldredge & Co.	1950				
			122 La Salle St.					
			Offset H. Memory & Co.	1950	Even.			
			Sibley, French & Co.	1952½				
			128 La Salle St.					
			Offset do.	1947½	Paid Sibley, French & Co.	May 25	12 50	
			G. C. Ball & Co.	1945				
			161 Washington St.					
			Offset do.	1940	" G. C. Ball & Co.	28	12 50	
			J. B. Ream & Co.	1942½				
			126 Washington St.					
			Offset do.	1890	" J. B. Ream & Co	June 11	131 25	
			Cowling & Parker	1892½				
			161 Washington St.					
			Offset D. Dows & Co.	1705	" Cowling & Parker	25	468 75	
			McCormack Adams	1705				
			Chamber of Commerce.					
			Offset do.	1425	" McCormack Adams	July 10	700 00	
			J. B. Norton & Co.	1425				
			159 La Salle St.					
			Offset do.	1875	Collected J. B. Norton & Co.	" 10		1,125 00
		250 b'r'ls.	Received from V. W. Macfarlane & Co.	1875	Paid V. W. Macfarlane & Co.	Aug't 1	4,661 50	
			191 La Salle St.					
					Carried forward		15,775 75	1,400 00
			Payments made by offset or cheque.					
72							15,775 75	1,400 00
May	19	250 b'r'ls.	G. C. Eldridge & Co.	1950				
			122 La Sale St.					
			Offset H. Memory	1947½	Paid H. Memory & Co.	May 24	6 25	
			Shoeneman & Co.	1930				
			Union Building.					

August—*Pork*—Continued.

Date of purchase.	Quantity.	Of whom bought.	Price.	Who paid on offsets or deliveries.	Date.	Cheques paid.	Cheques collected.
		Offset do.	1905	" Shoeneman & Co.	June 6	62 50	
		R. Warren & Co. 132 La Sale St.	1912½				
		Offset J. Gaynor	1885	" R. Warren & Co.	13	68 75	
		Cowling & Parker 159 Washington St.	1897½				
		Offset Roseabaun Bros.	1705	" Cowling & Parker	27	481 25	
		Cudahy & Stevers 161 Washington St.	1712½				
		Offset Shepherd & Taylor	1387½	" Cudahy & Stevers	July 12	812 50	
		J. B. Norton & Co. 159 La Salle St.	1320	" Seymour, Hunt & Co. ac. Sibley, French & Co.	21	6 25	
		Offset Sibley, French & Co.	1350	Collected Sibley, French & Co.	19	------	81 25
	250 b'r'ls	Received from G. W. Higgins & Co. 123 La Salle St.	1402½	Paid G. W. Higgins & Co.	Aug't 1	3,390 25	
May 22	250 b'r'ls	Cudahy & Stevens 161 Washington St.	1982½				
		Offset do.	1835	Paid Cudahy & Stevers	June 13	368 75	
		Jones & Raymond Chamber of Commerce.	1835				
		Offset do	1900	Collected Jones & Raymond	"	------	162 50
		A. C. Helenholz 156 Washington St.	1912½				
		Offset D. H. Denton	1837½	Paid A. C. Helenholtz	21	200	
		Chicago Packing Co. 191 La Salle St.	1830				

			Offset do.	1585	Paid Chicago Pack'g & P. Co.	July 6	612 50	
			G. C. Eldridge & Co.	1597½				
			122 La Salle St.					
			Offset do.	1425	Paid G. C. Eldredge & Co.	10	431 25	
		250 b'r'ls.	Received from John Gaynor, ac. Baldwin & Stone.	1417½	Paid John Gaynor	Aug't 1	3,517 75	
			185 La Salle St.					
May	22	250 b'r'ls.	J. P. Taylor	1982½				
			Gone out of business.					
			Offset G. C. Ball & Co.	1940	Paid G. C. Ball & Co.	May 28	106 25	
			J. B. Ream & Co.	1942½				
			126 Washington St.					
			Offset D. H. Denton & Co.	1915	" J. B. Ream & Co.	June 21	68 75	
		250 b'r'ls.	Received from Poole Kent & Co.	1925	" Poole, Kent & Co.	Aug't 1	4,786 50	
			116 La Salle St.					
May	22	250 b'r'ls.	W. H. Siberhorn	1982½	Collected Wm. Young & Co., ac. G. D. Baldwin & Co.	May 24	--------	18 75
			116 La Salle St.					
			Offset G. D. Baldwin & Co.	1990				
			Counselman & Co.	1980				
			122 La Salle St.					
			Offset do.	1835	Paid C. Counselman	June 16	362 50	
			Cudahy & Stevers	1840				
			161 Washington St.					
			Offset do.	1740	" Cudahy & Stevers	26	250 00	
			Hoard Bros. & Co.	1730	" McCormack Adams, ac. G. Stewart & Co.	July 12	300 00	
			Cor. Randolph & La Salle St.					
			Offset G. Stewart & Co.	1610				
		250 b'rl's.	Received from G. W. Higgins & Co.	1612½	Paid G. W. Higgins & Co.	Aug't 1	3,915 25	
			123 La Salle St.					
					Carried forward	--------	35,523 00	1,662 50
73			Payments made by offset or cheques.					
							35,523 00	1,662 50
1883. May	22	250 b'r'ls.	Cudahy & Stevers	1982½				
			161 Washington St.					
			Offset Stiles, Goldy & Co.	1960	Paid Stiles, Goldy & Co.	June 7	56 25	

August—Pork—Continued.

Date of purchase.	Quantity.	Of whom bought.	Price.	Who paid on offsets or deliveries.	Date	Cheques paid.	Cheques collected.
		D. Eggleston & Son	1962½				
		167 Washington St.					
		Offset F. P. Schmitt & Co.	1682½	" D. Eggleston & Son	22	700 00	
	250 b'r'ls.	Received from G. W. Higgins & Co.	1682½	" G. W. Higgins & Co.	Aug't 1	4,090 25	
		123 La Salle St.					
May 22	250 b'r'ls.	Blair & Blair	1995				
		Chamber of Commerce.					
		Offset do.	1955	Paid Blair & Blair	May 22 23	100 00	
		D. H. Denton & Co.	1955				
		Times Building.					
		Offset do.	1957½	Collected D. H. Denton & Co			6 25
		G. C. Ball & Co.	1957½				
		161 Washington St.					
		Offset do.	1947½	Paid G. C. Ball & Co.	June 4	25 00	
		Shoeneman & Co.	1930				
		Union Building.					
		Offset Armour & Co.	1917½	" Armour & Co.	8	31 25	
		Mott & Champling	1915	" Shaw & Raymond, ac. Mott & Champlin.	11	18 75	
		188 Washington St.					
		Offset G. D. Baldwin & Co.	1907½				
		H. D. Warner & Co.	1910				
		123 La Salle St.					
		Offset Bigelow & Co.	1815	Paid H. D. Warren & Co.	18	237 50	
		Cudahy & Stevers	1815				
		161 Washington St.					

		Offset do.	1627½	" Cudahy & Stevers	29	468 75	
	250 b'r'ls.	Received from H. Botsford & Co.	1637½	" H. Botsford & Co.	Aug't 1	4,022 75	
		159 La Salle St.					
May 22.	250 b'r'ls.	Blair & Blair	1995				
		Chamber of Commerce.					
		Offset do.	1955	Paid Blair & Blair	May 23	100 00	
		Sibley, French & Co.	1957½				
		189 La Salle St.					
		Offset do.	1917½	" Sibley, French & Co.	June 7	100 00	
		E. A. Driver & Co.	1917½				
		157 Washington St.					
		Offset do.	1920	Collected E. A. Driver & Co.	"		6 25
		John Gaynor	1920				
		177 La Salle St.					
		Offset do.	1912½	Paid John Gaynor	9	18 75	
		Cudahy & Stevers	1912½				
		161 Washington St.					
		Offset do.	1802½	" Cudahy & Stevers	"	275 00	
		H. H. Bliss & Co.	1822½				
		159 La Salle St.					
		Offset Warren & Co.	1790	" Warren & Co.	"	81 25	
		Cudahy & Stevers	1770				
		161 Washington St.					
		Offset J. B. Rogant & Co.	1620	" Cudahy & Stevers	July 2	375 00	
		N. B. Ream & Co.	1547½				
		159 La Salle St.					
		Offset do.	1587½	Collected N. B. Ream & Co.	9		100.00
	250 b'r'ls.	Received from G. W. Higgins & Co.	1665	Paid G. W. Higgins & Co.	Aug't 1	4,046 50	
		123 La Salle St.					
				Carried forward		50,270 00	1,775 00
		Payments made by offset or cheque.					
74						50,270 00	1,775 00
1883. May 22	250 b'r'ls.	Blair & Blair	1995				
		Chamber of Commerce.					
		Offset do.	1955	Paid Blair & Blair	May 23	100 00	
		H. Memory	1957½				
		126 Washington St.					
		Offset do.	1972½	Collected H. Memory	May 25		37 50

August—Pork—Continued.

Date of purchase.	Quantity.	Of whom bought.	Price.	Who paid on offsets or deliveries.	Date.	Cheques paid.	Cheques collected.
		H. Ferguson	1967½				
		163 Washington St.					
		Offset H. Memory	1940	Paid H. Ferguson	June 6	68 75	
		Dwight & Gillette	1935				
		Merchants' Building.					
		Offset E. A. Driver & Co.	1907½	" Dwight & Gillette	22	68 75	
		R. Warren & Co.	1912½				
		132 La Salle St.					
		Offset do.	1667½	" R. Warren & Co.	28	612 50	
	250 b'r'ls.	Received from G. W. Higgins & Co.	1665	" G. W. Higgins & Co.	Aug't 1	4,046 50	
		123 La Salle St.					
May 22	250 b'r'ls.	Blair & Blair	1995				
		Chamber of Commerce.					
		Offset Potts & Lee	1972½	Paid Blair & Blair	May 25	56 25	
		A. H. Hovey & Co.	1947½				
		84 La Salle St.					
		Offset do.	1790	" A. H. Hovey & Co.	June 16	393 75	
		C. J. Kershaw & Co.	1782½				
		88 La Salle St.					
		Offset Sibley, French & Co.	1702½	" Sibley, French & Co.	21	200 00	
		Cudahy & Stevers	1712½				
		161 Washington St.					
		Offset do.	1395	" Cudahy & Stevers	July 12	793 75	
	250 b'r'ls.	Received from D. H. Denton & Co.	1417½	" D. H. Denton & Co.	Aug't 1	3,487 75	
		Times Building.					
						60,098 00	1,812 50

Less money collected		1,812 50
		58,285 50
Storage, see table, page —		1,050 00
		59,335 50
Amount charged to ac. Jas. McCrea	59,323 00	
We are unable to trace	12 50	
		59,335 50

Payments made by offset or cheque.

75

August—Lard.

Date of purchase.	Quantity.	Of whom bought.	Price.	Who paid on offsets or deliveries.	Date.	Cheques paid.
1883. May 19	250 tcs.	Fowler Bros., 123 La Salle St.	1177½			
		Offset do.	950	Paid Fowler Bros.	June 28	1,820 00
		E. B. Stevens & Co., 170 Washington St.	950			
		Offset do.	935	" E. B. Stevens & Co.	"	120 00
		Poole, Kent & Co., 116 La Salle St.	935			
		Offset Asa Dow	925	" Murry Nelson. ac. Poole, Kent & Co.	July 10	80 00
	250 tcs.	Received from W. P. Harvey & Co., 86 La Salle St.	925	" W. P. Harvey & Co	Aug't 1	7,688 98
May 19	250 tcs.	Fowler Bros., 123 La Salle St.	1177½			
		Offset do.	952½	Paid Fowler Bros.	June 28	1,800 00
		Culver & Co., 126 Washington St.	925			
		Offset W. Kirkwood	920	" Wm. Kirkwood	July 7	40 00
		McHenry & Balding, 162 Washington St.	952½			
		Offset Gabain & Co.	925	" Armour & Co. ac. McHenry & Balding.	9	220 00
		G. C. Eldredge & Co., 122 La Salle St.	920			
		Offset Holden & Co.	917½	" G. C. Eldredge & Co.	10	20 00

		250 tcs.	Received from T. H. Bellas & Co.	915	" T. H. Bellas & Co.	Aug't	1	7,935 75
			Merchants' Building.					
May	19	250 tcs.	G. C. Eldredge & Co.	1177½	Paid N. K. Fairbank.			
			122 La Salle St.					
			Offset McCormack & Adams	1127½	Ac. G. C. Eldredge & Co.	June	7	400 00
			Poole, Kent & Co.	1127½				
			116 La Salle St.					
			Offset do.	1070	Paid Poole, Kent & Co.		13	460 00
			W. H. Alcock	1072½				
			123 La Salle St.					
			Offset Chicago Pack'g Co.	962½	" W. H. Alcock		21	880 00
			N. B. Ream & Co.	952½				
			159 La Salle St.					
			Offset Holden & Co.	915	" Holden & Co.	July	10	300 00
			Field, Lindley & Co.	927½				
			First National Bank Building.					
			Offset J. B. Hobbs & Co.	862½	" J. B. Hobbs & Co.		12	520
		250 tcs.	Received from Wm. Kirkwood	865	" Wm. Kirkwood	Aug't	1	7,324 71
			122 La Salle St.					
May	19	250 tcs.	Poole, Kent & Co.	1185				
			116 La Salle St.					
			Offset do.	1115	Paid Pool, Kent & Co.	June	7	560 00
			W. T. Baker & Co.	1122½				
			Chamber of Commerce.					
			Offset W. H. Alcock	917½	" W. T. Baker & Co.	July	3	1,640 00
			R. W. Roloson	912½				
			Merchants' Building.					
			Offset N. K. Fairbank & Co.	907½	" N. K. Fairbank & Co.		10	40 00
		250 tcs.	Received from Wm. Kirkwood	907½	" W. Kirkwood	Aug't	1	7,459 54
			122 La Salle St.		Carried forward			39,308 98
			Payments made by offset or cheque.					
76								
					Forward			39,308 98
1883. May	22	250 tcs.	G. D. Baldwin & Co.	1177½				
			Chamber of Commerce.					
			Offset do.	1167½	Paid G. D. Baldwin & Co.	May	24	80 00
			L. M. Studwell	1165				
			162 Washington St.					

August—Lard.—Continued.

Date of purchase.		Quantity.	Of whom bought.	Price.	Who paid on offsets or deliveries.	Date.		Cheque paid.
			Offset Chicago Pack'g Co.	962½	" Chicago Pack'g Co.	June	21	1,620 00
		250 tcs.	Received from Bensley & Wagner	965	" Bensley & Wagner	Aug't	1	8,282 11
			133 La Salle St.					
May	22	250 tcs.	L. M. Studwell	1185				
			162 Washington St.					
			Offset Chicago Pack'g Co.	962½	Paid Chicago Pack'g Co.	June	7	1,780 00
			Sibley, French & Co.	985	" E. B. Sackett & Co.			
			128 La Salle St.					
			Offset Cudahy & Stevers	975	Ac. Sibley, French & Co.		22	80 00
			N. B. Ream & Co.	952½				
			150 La Salle St.					
			Offset do.	862½	Paid N. B. Ream & Co.	July	14	680 00
		250 tcs.	Received from R. W. Roloson	872½	" R. W. Roloson	Aug't	1	7,131 50
			14 Merchants' Building.					
May	22	250 tcs.	G. C. Eldredge & Co.	1185				
			122 La Salle St.					
			Offset Mair & Dwight	1127½	Paid Mair & Dwight	June	7	460 00
			Dwight & Gillette	1130				
			Merchants' Building.					
			Offset D. H. Denton & Co.	995	" Dwight & Gillette		27	1,080 00
			R. Warren & Co.	995				
			132 La Salle St.					
			Offset E. B. Stevens & Co.	915	" R. Warren	July	10	640 00
			Stiles, Goldy & McMahon	890	" Stiles, Goldy & McM.			
			171 La Salle St.					
			Offset do.	872½	See offset 5026	"	11	140 00

		250 tcs.	Received from A. Geddes 122 La Salle St.	895	" A. Geddes	Aug't 1	7,404 13
May	22	250 tcs.	G. C. Eldredge & Co. 122 La Salle St.	1185	Paid Davies Atkinson.		
			Offset Mair & Dwight	1127½	Ac. Mair & Dwight	June 7	460 00
			M. S. Nichols & Co. 135 La Salle St.	1120			
			Offset do.	1115	M. S. Nichols & Co.	" 7	40 00
			N. K. Fairbank & Co. Cor. Randolph St. & Wabash Av.	1122½			
			Offset Chicago Pack'g Co.	962½	Paid Chicago Pack'g Co.	" 21	1,280 00
			Fitch & Phillips 153 Monroe St.	975			
			Offset Chicago Pack'g Co.	935	" Fitch & Phillips	" 29	320 00
			Poole, Kent & Co. 116 La Salle St.	935			
			Offset W. H. Alcock	917½	" W. H. Alcock	July 9	140 00
			Chicago Pack'g Co. 195 La Salle St.	887½			
			Offset do.	830	" Chicago Pack'g Co.	14	460 00
		250 tcs.	Received from A. Geddes 122 La Salle St.	850	" A. Geddes	Aug't 1	7,432 58
					Carried forward		78,819 30
			Payments made by offset or cheque.				
77					Forward		78,819 30
May	22	250 tcs.	Wm. Kirkwood 122 La Salle St.	1182½			
			Offset do.	1050	Paid Wm. Kirkwood	June 16	1,060 00
			M. Geoch Everingham Times Building.	1045			
			Offset do.	962½	Paid McGeoch, E. & Co. See offset No. 4347.	"	660 00
			R. Warren 132 La Salle St.	995			
			Offset Chicago Pack'g Co.	927¼	Paid R. Warren	July 7	540 00
		250 tcs.	Received from Wm. Kirkwood 122 La Salle St.	895	" Wm. Kirkwood	Aug't 1	7,384 73
May	22	250 tcs.	Wm. Kirkwood 122 La Salle St.	1182½			

August—*Lard*—Continued

Date of purchase.	Quantity.	Of whom bought.	Price.	Who paid on offsets or deliveries.	Date.	Cheque paid.
		Offset do.	1022½	Paid Wm. Kirkwood	June 16	1,280 00
		Wm. Kirkwood 122 La Salle St.	1045			
		Offset N. K. Fairbank & Co.	972½	" Wm. Kirkwood	22	580 00
		Fitch & Phillips 153 Monroe St.	952¼			
		Offset do.	942½	" Fitch & Phillips	28	80 00
		Chicago Pack'g Co. 195 La Salle St.	890			
		Offset do.	830	" Chicago Pack'g Co.	July 14	480 00
	250 tcs.	Received from C. J. Kershaw & Co. 88 La Salle St.	892½	" C. J. Kershaw & Co.	Aug't 1	7,596 90
May 22	250 tcs.	Wm. Kirkwood 122 La Salle St.	1182½			
		Offset Culver & Co.	1167½	Paid Wm. Kirkwood	June 11	120 00
		Poole, Kent & Co. 116 La Salle St.	1162½			
		Offset A. H. Bliss & Co.	1085	" Poole, Kent & Co.	13	620 00
		Alex. Geddes 122 La Salle St.	1082½			
		Offset E. A. Driver & Co.	920	" A. Geddes	July 7	1,300 00
	250 tcs.	Received from Wm. Kirkwood 122 La Salle St.	905	" Wm. Kirkwood	Aug't 1	7,435 00
May 22	250 tcs.	Wm. Kirkwood 122 La Salle St.	1182½	P.		
		Offset Shoeueman & Co.	1050	Paid Wm. Kirkwood	June 18	1,060 00

	Wm. Kirkwood	1045						
	122 La Salle St.							
	Offset E. H. Pulsifer & Co.	967¼	"	Wm. Kirkwood		22		620 00
	Alex. Geddes	985						
	122 La Salle St.							
	Offset Fowler Bros.	920	"	Fowler Bros.	July	9		520 00
250 tcs.	Received from Wm. Kirdwood	907½	"	Wm. Kirkwood	Aug't	1		7,446 12
	122 La Salle St.							
								117,602 05
			Storage. See page —.					1,100 00
								118,702 05
			Am't ch'g'd to ac. Jas. McCrea				118,622 05	
			We lost on contracts				80 00	118,702 05

Payments made by offset or cheque.

May 19, 1000 tcs. lard, bought 1177¼, was reported 1175.

Description of Warehouse Receipts of Pork, Rec'd August 1st, 1883.

Date of Contract.		Quantity.	Price.	From whom rec'd.	Date of Delivery.		Warehouse receipt.	Storage.
1883. July	26	250	1417½	John Gaynor, 177 La Salle St., ac. Baldwin & Stone.	1883. Aug't	1	B. F. Murphey Pack'g Co., warehouse A, No. 1100, dated June 1st, 1883; brand, F. Clifton & Co., lot M.	30 00
June	28	"	1625	H. Botsford & Co., 150 La Salle St.		"	G. W. Higgins & Co., warehouse No. 1644, dated Jan'ry 2, 1883; brand, G. W. Higgins & Co., lot TT.	105 00
June	27	"	1682½	G. W. Higgins & Co., 123 La Salle St.		"	G. W. Higgins & Co., warehouse No. 1618, dated Dec'r 1, 1882; brand, G. W. Higgins & Co., lot JJ.	120 00
July	26	"	1417½	D. H. Denton & Co., Times Building.		"	Chicago Packing & Provision Co., warehouse C, No. A 444, dated April 2, 1883; brand, Chicago P. & P. Co., lot 171.	60 00
June	11	"	1875	V. W. MacFarlane & Co., Calumet Building.		"	B. F. Murphey Pack'g Co., packing house No. 1108, dated June 1st, 1883; brand, F. Clifton & Co., lot E 2.	30 00
	30	"	1637½	H. Botsford & Co., 150 La Salle St.		"	Chicago Packing & Prov. Co., warehouse C, No. 353, dated March 1, 1883; brand, Chicago P. & P. Co., lot 55.	75 00
Aug't	1	"	1925	Poole, Kent & Co., 114 La Salle St.		"	B. F. Murphey Pack'g Co., packing house No. 1107, dated June 1st, 1883; brand, Frank Clifton & Co., lot 4.	30 00
June	29	"	1612½	G. W. Higgins & Co., 123 La Salle St.		"	G. W. Higgins & Co., warehouse No. 1610, dated Dec'r 1st, 1882; brand, G. W. Higgins & Co., lot BB.	120 00
July	17	"	1402½	Do.		"	G. W. Higgins & Co., warehouse No. 1622, dated Dec'r 1st, 1882; brand, G. W. Higgins & Co., lot NN.	120 00
June	20	"	1665	Do.		"	G. W. Higgins & Co., warehouse No. 1620, dated Dec'r 1, 1882; brand, G. W. Higgins & Co., lot LL.	120 00
	"	"	1665	Do.		"	G. W. Higgins & Co., warehouse No. 1619, dated Dec'r 1, '82; brand, G. W. Higgins & Co., lot KK.	120 00
	27	"	1682½	Do.		"	G. W. Higgins & Co., warehouse No. 1612, dated Dec'r 1, 1882; brand, G. W. Higgins & Co., lot DD.	120 00
							Total	$1,050 00

79

Description of Warehouse Receipts of Lard, received August 1st, 1883.

Date of contract.	Quantity.	Price.	From whom rec'd.	Date of delivery.	Warehouse receipt.	Storage.
1883. June 20	250	965	Bensley & Wagner, 133 La Salle St.	Aug't 1	B. F. Murphey Pack'g Co., packing-house receipt No. 1151, dated June 18, 1883; brand, J. Wright & Co., marked (C) 14.	40 00
28	"	925	W. P. Harney & Co., 86 La Salle St.	"	Anglo-American Pack'g & Prov. Co., warehouse D, No. 190, dated March 1st, 1883, brand, J. Wright & Co., lot (C) 2.	100 00
21	"	905	W. Kirkwood, 122 La Salle St.	"	Chicago Pack'g & Prov. Co., warehouse A, No. 279, dated Dec'r 9, 1882; brand, Chicago Pack'g & Prov. Co., lot 36.	160 00
11	"	872½	R. W. Roloson, Merchants' Building.	"	Anglo-American Pack'g & Prov. Co., warehouse D, No. 207, dated March 2, 1883; brand, J. Wright & Co., lot (45) 10.	100 00
14	"	850	A. Geddes, 122 La Salle St.	"	J. C. Ferguson & Co., packing house No. 37, dated May 2, 1883; brand, Landers & Co., lot (H).	60 00
12	"	895	Do........................	"	Anglo-American Pack'g & Prov. Co., warehouse D, No. 170, dated March 1, 1883; brand, J. Wright & Co., lot (69) 10.	100 00
20	"	892½	C. J. Kershaw & Co., 88 La Salle St.	"	Hately Bros., warehouse A, No. 752, dated April 1st, 1883; brand, J. E. Boyd & Co., marked Z.	80 00
21	"	895	Wm. Kirkwood, 122 La Salle St.	"	Anglo-American Pack'g & Prov. Co., warehouse D, No. 201, dated March 2, 1883; brand, J. Wright & Co., lot (38) 10.	100 00
10	"	865	Do........................	"	Chicago Pack'g & Prov. Co., warehouse A, No. 462, dated May 1, 1883; brand, Chicago Pack'g & P. Co., lot 122.	60 00
21	"	907½	Do........................	"	Anglo-American Pack'g & Prov. Co., warehouse D, No. 169, dated M'ch 1st, 1883; brand, J. Wright & Co., lot (68) 10.	100 00
"	"	907½	Do........................	"	Chicago Packing & Prov. Co., warehouse A, dated Dec'r 1st, 1882, brand, Chicago Pack'g & Prov. Co., No. 299, lot 67.	160 00
26	"	915	T. H. Bellas & Co., 153 Washington St.	"	Thorne & Co., warehouse No. 773, dated June 15, 1883; brand, J. Wright & Co., mark (C) 30.	40 00
					Total........................	$1,100 00

Pork—August—Sold.

Date of sale.	Quantity.	Price.	To whom sold & delivery notice issued.	Date of delivery.	Warehouse receipt.	Amount.	Who paid & received property.
1883. Aug't 1	250	1,335	G. D. Baldwin & Co. Chamber of Commerce.	1883. Aug't 1	Chicago Pack'g & Prov. Co., warehouse D, No. A 444, dated April 2, 1883; brand, Chicago Pack'g & Prov. Co., lot 171.	3,281 50	G. D. Baldwin & Co.
"	"	"	Do.	"	G. W. Higgins & Co., warehouse No. 1644, dated Jan'ry 2d, 1883; brand, G. W. Higgins & Co., lot T T.	3,236 50	W. H. Alcock.
"	"	"	Do.	"	B. F. Murphey Pack'g Co., No. 1108, dated June 1st, 1883; brand, F. Clifton & Co., lot E 2.	3,311 50	Cudahy & Stevers.
"	"	"	Do.	"	Chicago Pack'g & Prov. Co., warehouse C, No. 353, dated M'ch 1st, 1883; brand, Chicago Pack'g & Prov. Co., lot 55.	3,254 00 12 50	G. C. Walker & Co. G. D. Baldwin & Co.
"	"	"	Do.	"	G. W. Higgins & Co., warehouse No. 1612, dated Dec'r 1st, 1882; brand, G. W. Higgins & Co., lot D D.	3,221 50	G. Stewart & Co.
"	"	"	Do.	"	B. F. Murphey Pack'g Co., packing house No. 1107, dated June 1st, 1883; brand, F. Clifton & Co., lot 4.	3,311 50	Chicago Pack'g Co.
"	"	"	Do.	"	B. F. Murphey Pack'g Co., No. 1100, dated June 1st, 1883. brand, F. Clifton & Co., lot M, warehouse A	3,311 50	Do.
"	"	"	Do.	"	G. W. Higgins & Co., warehouse No. 1618, dated Dec'r 1, 1882; brand, G. W. Higgins & Co., lot J J.	3,221 50	Parker, Field & Co.
"	"	"	H. D. Warner & Co., 123 La Salle St.	"	G. W. Higgins & Co., warehouse No. 1619, dated Dec'r 1, 1882; brand, G. W. Higgins & Co., lot K K.	3,221 50	V. W. McFarlane.
"	"	"	Do.	"	G. W. Higgins & Co., warehouse No. 1620, dated Dec'r 1st, 1882; brand, G. W. Higgins & Co., lott L L.	3,221 50	B. F. Murphey Pack'g Co.
"	"	"	Do.	"	G. W. Higgins & Co., warehouse No. 1610, dated Dec'r 1st, 1882; brand, G. W. Higgins & Co., lot B B.	3,221 50	Armour & Co.
"	"	"	Do.	"	G. W. Higgins & Co., warehouse No. 1622, dated Dec'r 1st 1882; brand, G. W. Higgins & Co., lot N N.	3,221 50	G. Stewart & Co.
						39,048 00	
					Add storage, page —	1,050 00	
						40,098 00	
					Amount to cr. ac. Jas. McCrea on sale of pork................	40,098 00	

Lard—August—Sold.

Date of sale.	Quantity.	Price.	To whom sold & delivery notice issued.	Date of delivery.	Warehouse receipt.	Amount.	Who paid & received property.
1883. Aug't 1.	250	850	R. W. Roloson, 14 Merchants' Building.	1883. Aug't 1.	Anglo-American Pack'g & Prov. Co., warehouse D, No. 170; brand, J. Wright & Co., lot (69) 10, dated March 1, 1883.	7,037 35	J. Morrell & Co.
"	"	"	Do.	"	Anglo-American Pack'g & Prov. Co., warehouse D, No. 207; brand, J. Wright & Co., — (45) 10, March 2, 1883.	6,948 00	J. J. Bryant & Co.
"	"	"	Do.	"	Thorne & Co., warehouse No. 773, dated June 15, 1883; brand, J. Wright & Co., lot (6) 30.	7,402 55	Higgins & Gilbert.
"	"	"	Do.	"	Hately Bros., warehouse A, No. 752, dated April 1, 1883; brand, J. E. Boyd & Co., marked L.	7,246 22	Chicago Pack'g & Prov. Co.
"	"	"	Do.	"	J. C. Ferguson & Co., packing house No. 37, dated May 2, 1883; brand, Landers & Co., marked (H).	7,418 73	Do.
"	"	"	Do.	"	Anglo-American Pack'g & Prov. Co., warehouse D, No. 169; brand J. Wright & Co., lot (68) 10, March 1, 1883.	6,993 65	J. Morrell & Co.
"	"	"	Do.	"	Chicago Pack'g & Prov. Co., warehouse A, dated Dec'r 1, 1882; brand, Chicago C. P. P. Co., lot 67, No. 299.	6,979 29	Do.
"	"	"	Do.	"	Anglo-American Pack'g & Prov. Co., warehouse D, No. 190; brand, J. Wright & Co., — (C) 2, dated M'ch 1st, 1883.	7,081 29	Do.
"	"	"	Do.	"	B. F. Murphey Pack'g Co. packing house No. 1151, dated June 18, 1883; brand, J. Wright & Co., marked (C) 14.	7,350 09	Chicago Pack'g & Prov. Co.
"	"	"	Do.	"	Anglo-American Pack'g & Prov. Co., No. 201, W. H. D., M'ch 2, 1883; brand, J. Wright & Co., marked (38) 10.	7,018 35	Do.
"	"	"	Do.	"	Chicago Pack'g & Prov. Co., No. 279, dated Dec'r 9, 1882; brand, Chicago Pack'g & Prov. Co., lot 36, W. H., "A."	6,988 08	T. H. Bellas & Co.
"	"	"	Do.	"	Chicago Pack'g & Prov. Co., warehouse A, No. 462; brand, Chicago Pack'g & Prov. Co., dated May 1, 1883, lot 122.	7,195 48	Chicago Pack'g & Prov. Co.
						85,659 08	
					Add storage	1,100 00	
						86,759 08	
					Amount to cr. ac. J. McCrea on sale of lard....................	86,757 74	

82 The following is a detailed statement of the errors in computing the excess of lard, as shown on the preceeding page, and amounting to $1.34.

	Amount we received, with storage.		Dr.	Cr.	Amount credited to acc. J. McCrea.
	7,037 35				
Storage	100 00	7,137 35	5c.	-------	7,137 30
	6,948 00				
Storage	100 00	7,048 00	1 40	-------	7,046 60
	7,402 55				
Storage	40 00	7,442 55	-------	10c.	7,442 65
	7,246 22				
Storage	80 00	7,326 22	1c.	-------	7,326 21
	7,418 73				
Storage	60 00	7,478 73	-------	-------	7,478 73
	6,993 65				
Storage	100 00	7,093 65	-------	2c.	7,093 67
	6,979 29				
Storage	160 00	7,139 29	-------	1c.	7,139 30
	7,081 29				
Storage	100 00	7,181 29	-------	-------	7,181 29
	7,350 09				
Storage	40 00	7,390 09	-------	-------	7,390 09
	7,018 35				
Storage	100 00	7,118 35	1c.	-------	7,118 34
	6,988 08				
Storage	160 00	7,148 08	-------	-------	8,148 08
	7,195 48				
Storage	60 00	7,255 48	-------	-------	7,255 48
		86,759 08	1 47	13	86,757 74
Difference	-------	-------	-------	1 34	1 34
		$86,759 08	1 47	1 47	86,759 08

83 NOTE.—Storage charges on property are not paid until it is finally taken out of store, when they are paid by the party who removes the property; until that time the storage charges are deducted, but the inspection charges of $4.00 on each 250 b'r'ls pork and $10.00 on each 250 tcs. lard are collected on each delivery.

Our receipts and payments are on this basis:

On inquiry at the warehouses where the property received for Jas. McCrea was stored, we learn that it has all been shipped out, excepting one lot of 250 b'r'ls of mess pork, G. W. Higgins & Co., receipt No. 1618, dated December 1st, 1882; brand, G. W. Higgins & Co., lot J. J., stored in their warehouse, which is still there, and the receipt at the time of our inquiry, February 6, 1884, is still outstanding in the hands of some person to us unknown.

NOTE.—Since the above account was made we have learned that the outstanding warehouse receipt has been returned by the holder and the property taken out of store.

84 The following is a copy of the account current sent to James McCrea after the sale of his property in August, showing overweights of lard and other details and the final amount of $31,644.31 due to Higgins & Gilbert:

[Endorsed on back of page 86:] Statement of ac., Jas. McCrea, May 10 to 1st Aug't, 1883, with items in detail.

DR. *James McCrea, Cleveland, O., in Ac. with*

1883.				
August 1	1,000 brls. mess pork, for Aug't del'v'y, bought by your orders 5 | 19 | 83	19 50	19,500 00	
	Inspection		16 00	
				19,516 00
"	Do., do., do., 5 | 22 | 83	19 82½	19,825 00	
	Inspection		16 00	
				19,841 00
"	Do., do., do., 5 | 22 | 83	19 95	19,550 00	
	Inspection		16 00	
				19,566 00
"	250 tcs. P. S. lard, for Aug't del'v'y, bought by your orders 5 | 19 | 83, 80,000, @	11 75	9,400 00	
	Excess, 6,865	8 62½	592 11	
	Inspection		10 00	
				10,002 11
"	Do., do., do., 5 | 19 | 83, 80,000	11 75	9,400 00	
	Excess, 2,800	8 62½	241 50	
	Inspection		10 00	
				9,651 50
"	Do., do., do., 5 | 19 | 83, 80,000	11 75	9,400 00	
	Excess, 4,001	8 62½	345 00	
	Inspection		10 00	
				9,755 00
"	Do., do., do., 5 | 19 | 83, 80,000	11 75	9,400 00	
	Excess, 3,649	8 62½	314 73	
	Inspection		10 00	
				9,724 73
"	Do., do., 5 | 22 | 83, 80,000	11 82½	9,460 00	
	Excess, 5,272	8 62½	454 71	
	Inspection		10 00	
				9,924 71
"	Do., do., 5 | 22 | 83, 80,000	11 82½	9,460 00	
	Excess, 3,357	8 62½	280 54	
	Inspection		10 00	
				9,759 54
"	Do., do., 5 | 22 | 83, 80,000	11 82½	9,460 00	
	Excess, 3,897	8 62½	336 12	
	Inspection		10 00	
				9,806 12
"	Do., do., 5 | 22 | 83, 80,000	11 82½	9,460 00	
	Excess, 6,109	8 62½	526 90	
	Inspection		10 00	
				9,996 90
"	Do., do., 5 | 22 | 83, 80,000 (corrected)	11 85½	9,480 00	
	Excess, 7,487	8 62½	645 75	
	Inspection		10 00	
				10,135 75
"	Do., do., 5 | 22 | 83, 80,000	11 85	9,480 00	
	Excess, 4,394	8 62½	378 98	
	Inspection		10 00	
				9,868 98
"	Do., do., 5 | 22 | 94, 80,000	11 85	9,480 00	
	Excess, 7,914	8 62½	682 58	
	Inspection		10 00	
				10,172 58
"	Do., do., 5 | 22 | 83, 80,000	11 85	9,480 00	
	Excess, 3,874	8 62½	334 13	
	Inspection		10 00	
				9,824 13
"	Commission on 3,000 brls. pork, @ 5c.		150 00	
"	Commission on 3,000 tcs. lard, @ 10c.		300 00	
				450 00
				178,395 05

86 *Higgins & Gilbert, Chicago, Ill.* Cr.

1883.					
May	10	By balance ac. rendered			1,895 00
	23	" cash		4,000 00	
	26	" "		2,000 00	
June	4	" "		3,000 00	
	9	" "		3,000 00	
	11	" "		3,000 00	
	14	" "		1,000 00	
	15	" "		2,000 00	
					18,000 00
August	1	" 3,000 brls. cash mess pork, sold for your ac.	13 35	40,050 00	
		Inspection		48 00	
					40,098 00
"		" 250 tcs. cash P. S. lard, sold for your ac., 80,000, @	8 50	6,800 00	
		Excess, 7,914	8 45	668 73	
		Inspection		10 00	
					7,478 73
"		Do., do., do., 80,000	8 50	6,800 00	
		Excess, 3,874	8 45	327 30	
		Inspection		10 00	
					7,137 30
"		Do., do., do., 80,000	8 50	6,800 00	
		Excess, 7,487	8 45	632 65	
		Inspection		10 00	
					7,442 65
"		Do., do., do., 80,000	8 50	6,800 00	
		Excess, 4,394	8 45	371 29	
		Inspection		10 00	
					7,181 29
"		Do., do., do., 80,000	8 50	6,800 00	
		Excess, 6,109	8 45	516 21	
		Inspection		10 00	
					7,326 21
"		Do., do., do., 80,000	8 50	6,800 00	
		Excess, 3,897	8 45	329 30	
		Inspection		10 00	
					7,139 30
"		Do., do., do., 80,000	8 50	6,800 00	
		Excess, 3,357	8 45	283 67	
		Inspection		10 00	
					7,093 67
"		Do., do., do., 80,000	8 50	6,800 00	
		Excess, 4,001	8 45	338 08	
		Inspection		10 00	
					7,148 08
"		Do., do., do., 80,000	8 50	6,800 00	
		Excess, 3,649	8 45	308 34	
		Inspection		10 00	
					7,118 34
"		Do., do., do., 80,000	8 50	6,800 00	
		Excess, 5,272	8 45	445 48	
		Inspection		10 00	
					7,255 48
"		Do., do., do., 80,000	8 50	6,800 00	
		Excess, 6,865	8 45	580 09	
		Inspection		10 00	
					7,390 09
"		Do., do., do., 80,000	8 50	6,800 00	
		Excess, 2,800	8 45	236 60	
		Inspection		10 00	
					7,046 60
					146,750 74
		Dr. balance			31,644 31
					178,395 05

90½ From the date of the purchases to their maturity and final settlement there was never a moment at which Higgins & Gilbert did not stand responsible on actual contracts then outstanding for the pork and lard bought on McCrea's order.

The foregoing answers cover in detail, as we believe, all our dealings with and on account of James McCrea within the time covered by the interrogatories filed with his answer in the case, and constitutes, as we believe, a full and complete answer to all said interrogatories so far as the facts in the case enable us to answer the same.

In answering to whom the various payments were made, we have traced and shown them in detail in the transactions involved in the suit. They were made substantially the same way in the previous transactions covered by the interrogatories, except that in those transactions the property was sold out by his order, while in the other it was received on his purchases, as above shown.

90¾ And these respondents fully and explicitly deny that they ever agreed with said defendant or had any understanding with him to the effect that any purchase or sale of any property should be made without an intention to deliver and pay for the same; and they say that all the charges of the defendant in his answer—in substance that his dealings with said plaintiffs were gambling transactions, or were intended so to be—so far as said plaintiffs are concerned, are wholly false and untrue, both in general and in detail, and that all of said transactions were and are, as above set forth, actual purchases and sales, made in good faith upon the request of said defendant, and that he justly owes to these plaintiffs the balance of thirty-one thousand six hundred & forty-four dollars and thirty-one cents ($31,644.31) claimed by them, with interest thereon, as the law may allow.

EDWARD M. HIGGIN.
FRED. F. GILBERT.

Subscribed & sworn to before me March 12th, A. D. 1884.

E. A. DRUMMOND,
U. S. Com'r.

NORTHERN DISTRICT OF ILLINOIS:

I, William H. Bradley, clerk of the circuit court of the United States for the northern district of Illinois, do hereby certify that I am well acquainted with the handwriting of E. A. Drummond, whose name is subscribed to the foregoing certificate, and that the same is his genuine signature, and that he was, at the time of signing the same, and is now, a United States commissioner, duly appointed, qualified, and commissioned by said court, and that as such full faith and credit are and of right ought to be given to all his official acts.

In testimony whereof I have hereunto subscribed my name and affixed the seal of said court at my office in Chicago, in said district, this twelfth day of March, A. D. 1884.

[Seal of Circuit Court, U. S. Northern Dist., Illinois, 1855.]

WM. H. BRADLEY, *Clerk.*

91 And afterwards, to wit, on the 3rd day of February, A. D. 1885, the following motion to continue was filed in said cause in said court, viz:

Motion for Continuance, &c.

In the Circuit Court of the United States for the Northern District of Ohio, Eastern Division.

HIGGINS and GILBERT, Plaintiffs, *vs.* JAMES MCCREA, Defendant.

The defendant, James McCrea, now comes and moves the court to continue this cause, because, he says, he cannot, for want of material testimony at this time, safely proceed to trial, and that the plaintiffs themselves have prevented this defendant from procuring such necessary testimony, and still prevent the same, as is more fully set forth in the affidavit filed herewith.

Defendant also asks the court, by some proper order, lawful in the premises, to stay further proceedings in this action until such time as the plaintiffs will submit to examination as witnesses, and as a reason for said motion he herewith makes a part hereof the affidavit which is filed herewith.

S. BURKE & WM. B. SANDERS,
For Def't.

STATE OF OHIO,
Cuyahoga County, } *ss:*

James McCrea, being duly sworn, says that he is the defendant above named, and in support of his said motion makes the following statement of facts: That *is* he is advised by counsel, and verily believes, he has a good, legal, and meritorious defense to this action; that the claim made by the plaintiffs is for alleged losses, claimed to have been sustained by them while acting as the agent of this defendant, and the question of defendant's indebtedness to
92 them and the validity of the claims made by them in this action involve the investigation of alleged transactions of plaintiffs on the Chicago Board of Trade for a period of several years; that the principal transactions, out of which the alleged indebtedness in the petition is said by the plaintiffs to have arisen, covered a period of several months and involves at least two hundred different transactions with sundry and various people, residents in the city of Chicago and elsewhere; that this defendant had no knowledge as to these different transactions when they are said to have taken place, and his only means of information as to the details of these alleged transactions of plaintiffs are such as he can derive from the plaintiffs themselves and by the verification of such information by an examination of such books and accounts and witnesses as may upon such information be made to appear material to this defendant's case.

And he further says that the plaintiffs themselves are material witnesses for the defendant, without whose testimony, taken before trial, he cannot prepare his case for trial or safely proceed to trial. Defendant further says that the plaintiffs reside in Chicago, Illinois,

ant's cause, and without whose testimony he cannot safely proceed to trial; and that he has not taken such testimony prior to this time for the reason as above stated, namely, that he had expected and relied upon his right to take the depositions of the plaintiffs, which would in all probability obviate the necessity of taking very
96 many other depositions, and that since the refusal of Judge Blodgett to issue such attachments as above mentioned defendant has been unable to take depositions by reason of sickness in the family of his attorney, Mr. Sanders, as above stated.

Defendant further says that, in addition to attempting to take the depositions of the plaintiffs as above mentioned, he attempted to get information from the plaintiffs as to their alleged dealing for him by filing interrogatories with his answer, but in answer thereto the plaintiffs have filed a voluminous mass of complicated figures and mathematical enigmas, conveying little, if any, of the information asked for, and for the most part entirely unintelligible to ordinary minds. Without an examination of plaintiffs before trial the defendant cannot prepare his defense, as upon such examination only can he discover the names of the witnesses and the existence of the books and papers, an examination of which is material in his defense, and without which he cannot safely proceed to trial at this or at any other term of court; that he cannot compel the attendance of the plaintiffs on trial, and that, even if they did appear, he could not safely proceed to trial, because the other witnesses and papers, books of account, and other evidence, whose existence and whereabouts he expects to discover upon an examination of plaintiffs, would be beyond the jurisdiction of this court, and could not be procured so as to be made available to this defendant upon such trial. After an examination of plaintiffs defendant expects to take the depositions of numerous other material witnesses, all of whom reside out of this jurisdiction, and whose testimony cannot be procured at this time.

Defendant further says that but for the captious refusal of the plaintiffs to give their testimony, as hereinbefore stated, the defendant would have been ready for trial at the former term of this court, and had the plaintiffs submitted to an examination defendant would have been ready for trial at this term, but that it is now impossible for him to be ready before the next term of this court,
97 as he must take the depositions of the plaintifis, if he be permitted so to do, and that whether or not, and even if such depositions were not taken, that the depositions of many other witnesses, all of whom reside out of this jurisdiction, must be taken before the defendant can safely proceed to trial. Defendant further says that up to the early part of January, 1885, the refusal of the plaintiffs to testify has been the sole reason and only reason why defendant has not fully prepared this case for trial, and upon the advice of his counsel that he had the right to take such depositions, he had relied upon his legal rights to take the same, and that he should not be forced to trial where his delay has been caused by the plaintiffs themselves, and that great injustice would be done the defendant by forcing him to trial at this term. He further states

that such delay as may be attributed to him since the early part of January, 1885, has been caused solely by the fact of the inability of his counsel, by reason of sickness and death in his immediate family, to give attention to the matter.

And defendant further says that this application is not made for delay merely, but that justice may be done.

JAMES McCREA.

Subscribed and sworn to before me by said James McCrea, Feb'y 7th, 1885.

JOHN BIGGS, [SEAL.]
Notary Public.

W. B. Sanders, one of the defendant's counsel, states professionally to the court that the facts stated in the foregoing affidavit of the defendant are within his, Wm. B. Sanders', personal knowledge, and are true; that defendant- counsel have relied upon their right to take plaintiffs depositions; that such practice is expressly authorized by the Ohio code and a common practice in the State courts, and the conditions existing and mentioned in U. S. statutes relating to taking depositions *de bene esse* is, in the opinion of defendant's counsel, expressly authorized by the principle established by the U. S. Supreme Court in the case of Texas *vs.* Chiles, 21 Wal., 488.
It is also so held by Judge Blatchford in case [of] Beaulsly
98 *vs.* Little, 14 Bla*ls*h., 106. That nothing has been done and
this motion is not filed for delay merely, but in the utmost good faith, and the granting of the same is, I believe, essential to the purposes of justice in this action.

WM. B. SANDERS,
Of Counsel for Def't.

Motion Granted and Leave to take Pl'ffs' Deposition.

And afterwards, to wit, on the 10th day of February, 1885, it being a day of the February term, 1885, of said court, the Hon. John Baxter, circuit judge, and Hon. Martin Welker, district judge, presiding, the following order was made in this case, viz:

HIGGINS and GILBERT, Plaintiffs, *vs.* JAMES MCCREA, Defendant.

This day came the parties, by their counsel, and came on to be heard the defendant's motion for a continuance and for causes therein set forth, and the same is allowed, with leave to its defendant to take the plaintiffs' deposition, as witnesses in this case.

Leave to File Amended Answer.

And afterwards, to wit, on the 23rd day of April, 1885, it being a day of the April term, 1885, of said court, the Hon. Martin Welker, district judge, presiding, the following order was made in this case, viz:

HIGGINS and GILBERT, Plaintiffs, *vs.* JAMES MCCREA, Defendant.

In this case leave is given the defendant to file an amended answer *instanter*.

And afterwards, to wit, on the 23rd day of April, 1885, the following amended answer was filed in said cause in said court, viz.:

Amended Answer.

In the Circuit Court of the United States for the Northern District of Ohio, Eastern Division.

EDWARD HIGGINS and FRED. F. GILBERT, Partners, &c.,
vs.
JAMES MCCREA.

99 The defendant, James McCrea, now comes and by leave of the court first had, files this, his amended answer to the petition of the plaintiff herein, and says that he admits that the plaintiffs are partners, as stated in said petition, and are members of the Chicago Board of Trade; and defendant denies each and every other allegation of said petition contained, except as hereinafter expressly admitted.

And, further answering, the defendant says that he never gave any instructions to nor had any dealings with the plaintiff-, except as hereinafter set forth, that is to say: That on May 12th, 1883, and for a long time prior thereto, the plaintiffs were engaged in the business of conducting, for themselves and others, speculative options and gambling transactions in pork and lard and other commodities on the Chicago Board of Trade, that is to say, the plaintiffs would and did, whenever so requested by persons wishing to gamble upon the price of said commodities, either buy or sell an option for any given quantity of the same for future delivery, upon the understanding and agreement of all parties to the transaction that no property should actually be delivered or exchanged, but that when the time for delivery came, or before that time, the transaction should be settled by a process known on such board of trade as "the settlement of differences"—that is, if the party dealing through said plaintiff had purchased an option for either of said commodities for such future delivery, and at the time named for delivery the market price was higher than the price at which he had purchased the option, then, in that case, the person from whom he had purchased should pay him the difference between the contract price and the then market price, and in case the market price was lower than that at which he had purchased, he would pay to the person from whom he had purchased the difference between such contract price and the then market price; and in conducting such gambling option transactions, plaintiffs required the persons dealing through 100 them to deposit a sum of money, called a "margin," sufficient in amount to at all times equal the difference between the market price and the price at which the person had bought or sold as aforesaid, and with the agreement that if such person failed to keep such margin good—that is, sufficient in amount, the plaintiff might close the transaction and be no longer liable to the customer therefor. And defendant says that by the statute of Illinois in such cases made and provided said option contracts above described are illegal and void, and prohibited by the express statutes of said States.

Defendant further says, that being advised that the plaintiffs were conducting the business hereinbefore described, and being solicited by them so to do, and being desirous himself to gamble and speculate on the price of pork and lard in the manner above described, he did, on or about September 12th, 1882, direct the plaintiffs to conduct for him, in the certain amount of pork and lard then specified, the kind of transaction above described—that is to say, to buy an option for January delivery of a large quantity of pork and lard with the distinct understanding of all parties that no pork or lard should be actually delivered, but that when the time for delivery came, or before that time, the parties should mutually adjust the difference in the contract and market price, as hereinbefore stated; and shortly thereafter the said plaintiffs reported to this defendant that they had purchased pork and lard for January delivery as aforesaid; and thereafter, and before the month of January, 1883, to wit, in the latter part of December, 1882, the said plaintiffs reported to this defendant that upon his request and by a process known on said board of trade as changing the deals from one month to another, they had so changed the transaction by which he had so purchased said option for January delivery, so that the pork and lard were not delivered until March, 1883; and thereafter in the latter part of February, 1883, the said plaintiffs again reported
to defendant that they had changed said transaction so
101 that the time for delivery of said commodities named in said
option was changed from March to June, 1883, and thereafter, to wit, about May 10th, 1883, the said plaintiffs reported to this defendant that they had at his request closed out the said transaction in pork and lard by an adjustment of difference- between the price at which the defendant had contracted for said commodities and the then market price, and that there remained in their hands to his credit a balance of eighteen hundred and ninety-five dollars ($1,895); and defendant says that neither in said contract so made for January delivery or March delivery or June delivery did any pork or lard actually change hands; nor was it intended that it should so change hands or be delivered. And shortly after said 10th of May, to wit, on or about the 19th of May, 1883, this defendant directed the plaintiff to continue to deal for him in pork and lard options, and to buy for him in the same manner in which they had been buying since December, 1882, the number of barrels of pork and tierces of lard set out in the plaintiff's petition, and to apply the balance which then remained in their hands to his credit, as a margin to protect them in said transaction; and shortly thereafter the plaintiffs reported to this defendant that they had bought the pork and lard specified in the several causes of action in said petition; but this defendant avers that they did not actually purchase any pork and lard, nor contract for an actual delivery of any pork and lard, but, whatever the form of said contract, they were in fact optious, and whether or not they made any contract or contracts with

other persons in regard to such transaction, this defendant has no other information than such as he has derived from the plaintiffs themselves; and, upon such information he states the fact to be that the defendants did, on or about the 19th of May, 1883, enter into contracts in their own name, but, as they now claim, upon account of this defendant, with the following-named persons and firms, 102 to wit: G. C. Eldridge and Company, Cudyahy & Stevens, J. P. Taylor, W. H. Silverhorn, Blair & Blair, Fowler Brothers, Poole, Kent & Company, G. D. Baldwin & Co., L. M. Studwell, and William Kirkwood; and that said contracts nominally provided for the delivery of pork and lard in the amount stated in the petition in the month of August, 1883, and defendant alleges the fact to be that it was the understanding and agreement of all parties to said transaction that no pork or lard should be delivered under said contracts, but that the same should be settled upon differences between the contract and market price, either before or on the 1st of August, 1883. Defendant further says that after the making of said contract it became and was the duty of said plaintiffs, as the agents of this defendant, to hold said contracts for his benefit, and to entirely refrain from using said contracts for their own advantage, or in any manner disposing of the same without the consent of this defendant; but the defendant alleges the fact to be that after said plaintiffs had so made said contracts, they did, on or about the dates following, to wit, May 24th, May 23rd, 25th, 22nd, and 28th, and June 7th, 13th, 16th, and 18th, 1883, without notice to defendant, and without the consent or knowledge of this defendant, sell and dispose of the same and convert the proceeds thereof to their own use and wholly and entirely release the parties with whom they had made said contracts from the obligations thereof; and defendant says that at no time after the 16th day of June, 1883, did the said plaintiffs hold any contracts whatever for the account of this defendant for pork and lard deliverable in August or at any other time, but that long prior thereto, as above stated, the plaintiffs had wholly released and *sustud* said contracts, and converted the same to their own use as aforesaid. Defendant further says that although the plaintiffs had so sold and disposed of said contracts, they continued to falsely report to the defendant that they were holding and carrying said contracts for his benefit, and requesting and requiring 103 this defendant from time to time to pay into their hands large sums of money as margins on said contracts; and between the 19th day of May, 1883, and up to and including June 15th, 1883, this defendant, at the request of said plaintiffs and upon their representations that they so had and held said contracts for his benefit, paid to them as margins upon said deal the sum of about nineteen thousand dollars. And defendant alleges the fact to be that at the various dates at which said money was paid said plaintiffs did not have any contracts held for account of this defendant, and the said payment so made to them were wholly without consideration, and made at plaintiffs' request and upon the false and fraudulent representations of said plaintiffs that they did so hold contracts for his benefit, when in truth and fact they had released and disposed of the same for their own use, as above set forth. And in the latter part of June, 1883, upon the plaintiffs calling upon this defendant for further margins upon said deals, this defendant expressly notified said plaintiffs that he declined and refused longer to participate in said gambling transactions, and utterly and entirely repudiated the same and notified the plaintiffs that anything which they did in the matter was done at their peril and expense. Further answering, the defendant denies that the pork and lard mentioned in the petition was paid for by the plaintiff, and denies that plaintiffs have paid out anything for his account, or that any pork or lard was actually delivered to said plaintiffs, or that any pork and lard was delivered to them on August 1st or at any other date about that time upon account of this defendant, and denies that on August first plaintiffs held contracts for park and lard for defendant's account.

Counter-Claim.

By way of further answer herein and for counter-claim against
the said plaintiffs, this defendant hereby makes part of this
104 counter-claim all the averments of his foregoing answer, as fully
and in all respects as if the same were herein at large set
forth, and says that upon said gambling transactions hereinbefore referred to, and upon the representations of plaintiffs to him that they had made said optional contracts for his benefit and were holding and carrying the same for him, he paid to the defendants from time to time various amounts of money as margins on said contracts as follows, to wit: In the year 1883, May 10th, $1,875.00; May 23rd, $4,000,00; May 26th, $2,000.00; June 4th, $3,000.00; June 9th, $3,000.00; June 12th, $3,000.00; June 14th, $1,000.00; June 15th, $1,000.00; June *15*th, $1,000.00; making in all an aggregate of ($19,897.00) nineteen thousand eight hundred and ninety-seven dollars.

Defendant further says that all of said money was paid to the plaintiffs upon their request, and upon the consideration of said plaintiffs carrying and protecting for this defendant the said option contracts which they had made for his benefit for pork and lard deliverable in August, 1883, and for the purpose of promoting and carrying out the gambling transaction in such pork and lard, as hereinbefore set forth; and that the said plaintiffs did not carry and hold said contracts for the benefit of this defendant, as they were bound to do as his agent, but, as hereinbefore stated, to wit, on or about the dates stated in above answer, plaintiffs sold and disposed of and converted the same to their own use, and wholly released the parties with whom said contracts were made from the obligations thereof, by reason of which fact said payments were made by this defendant to said plaintiffs wholly without consideration, and upon the false representations of plaintiffs that they held said contract, when in fact they had long since converted the same to their own use.

And defendant further says that said transactions were had in

the city of Chicago, in the State of Illinois, and that by the
105 statute law of the State of Illinois in such cases made and provided the option contracts in which the plaintiff- *was* dealing for this defendant were and are illegal and void and treated as gaming and gambling contracts. And such statutes further provide that money which is lost in such gambling transactions may be recovered by the party loosing the same, and that said sum of $19,897 was so lost by defendant to said plaintiffs in the gambling transactions and option deals hereinbefore set forth. And defendant says that by reason of the premises the said plaintiffs are indebted to him in the sum of nineteen thousand eight hundred and ninety-seven ($19,897) dollars, with interest from June 15th, 1883, for which sum he asks judgment against the said plaintiffs, and he prays that the petition of the plaintiffs against him may be dismissed.

By S. BURKE & WM. B. SANDERS,
His Att'ys.

THE STATE OF OHIO, *Northern District:*

James McCrea, being duly sworn, says that he is the defendant above named, and that the facts stated in his foregoing answer are true as he verily believes.

JAMES McCREA.

Subscribed by said James McCrea in my presence and by him sworn to before me this 23rd day of April, A. D. 1885.

HARRY L. VAIL, [SEAL.]
Notary Public.

And afterwards, to wit, on the 30th day of April, A. D. 1885, it being a day of the April term, 1885, of said court, the Hon. Martin Welker, district judge, presiding, the following order was made in this case, viz:

Leave to File Original Reply as Reply to Amended Answer.

EDWARD HIGGINS *et al.*, Plaintiffs,

vs.

JAMES McCREA, Defendant.

106 In this case, on application of the plaintiffs, it is ordered that their original reply to the defendant's original answer may stand and be refiled as their reply to defendant's amended answer, and have the same effect and force as though filed as a reply to said amended answer.

And afterwards, to wit, on the 5th and 6th days of May, 1885, being days of the April term, 1885, of said court, the Hon. John Baxter, circuit judge, and Hon. Martin Welker, district judge, presiding, the following proceedings were had in this case, viz:

Jury Sworn.

EDWARD HIGGINS *et al. vs.* JAMES MCCREA.

This day came the parties, by their counsel, and a jury being called, come, to wit, G. F. Hutchings, H. Campbell, Benjamin F. Lewis, W. Wanell, George Fresh, G. B. Smith, Samuel Bell, John J. Dodge, L. G. King, Levi Griffith, John Cole, and J. H. Peck, who, being elected, were duly empanelled and sworn and affirmed to well and truly try the issues joined between the parties; and thereupon the trial of this case proceeded, the testimony of both parties was closed, and, the hour for adjournment having arrived, the further trial of this case was postponed until to-morrow.

Verdict, &c.

EDWARD HIGGINS *et al. vs.* JAMES MCCREA.

WEDNESDAY, *May 6th.*

This day again came the parties, by their counsel, and came also the jury, as heretofore impanelled and sworn and affirmed herein, and the trial of this cause proceeded; the arguments of counsel were closed, and the jury, having first received their instructions from the court, retired for deliberation, in charge of the marshal, and said jury after a time came again into court and for verdict say:

107 "We, the jury in this case, being duly impanelled and sworn, do say, that upon the causes of action set forth in plaintiffs' petition we find in favor of the defendant; and we, the said jury, do further say that upon the counter-claim set forth in defendant's answer we do find in favor of the defendant, and we do find that there is due from the plaintiffs to the defendant upon said counter-claim the sum of nineteen thousand eight hundred and ninety-seven dollars, with interest from June 15th, 1883, to April 7th, 1885, two thousand one hundred and sixty-five dollars and forty-two cents; sum total, $22,062.42.

"GEO. F. HUTCHINGS, *Foreman.*"

And afterwards, to wit, on the 9th day of May, 1885, the following motion was filed in said cause in said court, viz:

Motion for a New Trial.

In the Circuit Court of the United States in and for the Northern District of Ohio, Eastern Division, *ss:*

EDWARD M. HIGGINS and FRED. F. GILBERT, Plaintiffs,
vs.
JAMES MCCREA, Defendant.

Now come the said plaintiffs, by their attorneys, and move the court here for a new trial in this action for the following reasons:

1st. That the court erred in the trial of the case in charging the jury as follows: The plaintiffs allege, gentlemen of the jury, that they were authorized and requested by the defendant to purchase for and on his account certain quantities of pork and lard. They allege that they did, in pursuance of that authority, and in accordance with the request, make the purchases.

The defendant in his plea, through his counsel, admits that the purchases were made in accordance with his instructions, and 108 the authority which he gave and request which he made. Of course, you will not be troubled upon that point. The parties to that extent agree, and you must act upon that agreement. The defendant, by way of defense, says, that notwithstanding he made this request, and gave the authority to plaintiffs to purchase, that he contemplated at the time, and that the plaintiffs understood and agreed, that the purchases were to be in form merely, that there was to be no delivery of the goods; that the purposes and intention of the parties were, that when the time for delivery came round, that they should adjust and settle the difference; that is, in common parlance, as they contend, bet upon what the price of pork and lard would be at the time when the contract was to be made. But the defendant swears that it was his understanding of the matter; that that was his understanding of the matter, and that it was so understood by these plaintiffs in this action. If that is true, if the parties did not contemplate an actual delivery of the property, but to enter into a speculation whereby the party winning should take the difference in the rise or the fall, the contract would be immoral in the eye of the law, and invalid, and such a contract as this court would not enforce.

But, on the other hand, the plaintiffs say that they contemplated an actual *bona fide* purchase and sale; that they did not understand and did not regard it as, in the language of the witness, a gambling transaction, but a real, *bona fide*, actual contract for the sale and delivery of the property. If that be so, gentlemen, then the contract would be a legitimate one, and the law would enforce it. It is legitimate for the parties to make a contract for the delivery of property at some future period, provided they mean a contract for a *bona fide* transaction, and the law recognizes the obligation and will enforce it. If the contract is void for the reason stated, the plaintiffs cannot recover anything, nor could the defendant recover on his cross-action. The law will leave these parties in the 109 situation that they have placed themselves, and no recovery, if it was a gambling transaction, a bet, a wager upon the future price of these commodities to an extent that I have stated, which would render the contract void as against the plaintiffs, the defendant cannot have any remedy over against the plaintiffs for money that was advanced upon that contract while it was in force. Otherwise, he would be holding that the law was partial, and refused to enforce the contract on the ground of immorality on one side and give the benefit of recovery upon the other side.

If you find that this was not a real and actual or *bona fide* purchase of property, with the understanding that it was to be delivered at the time specified in the future, you need not on that part of the case go any further, and the plaintiffs cannot recover. But if you should be of opinion that, although the defendants entertained the opinion that it was a gambling transaction, that the plaintiffs did not participate in that view of the question, did not intend anything but an actual purchase and an actual sale, the contract would be binding between these parties, and you would be called upon to go further and make an additional finding under the instructions of the court.

Assuming that this contract was valid and enforcible, the defendant says that he is not bound for the reason that after the purchases were made by the plaintiffs as his agents, and for his account, that they released the vendors, that they cancelled the contract, and that they did that without authority from him and without his knowledge or his subsequent ratification. That is what he says. Upon that state of facts, nothing more appearing, the plaintiffs could not recover anything; that release, or the cancellation of the contract, would have absolved the defendant from any obligation to pay. But the plaintiffs, in reply, say that the board of trade has certain rules and regulations, which the court has permitted to be
110 offered in evidence to you, and that under and in accordance
with those rules they had a right to cancel these contracts and substitute others in place of them; that these rules were known to and understood by the defendant, and that he, with that knowledge, acquiesced in that charge, this cancellation of the one contract and the alleged substitution of another in the place of it for present purposes; and without expressing any opinion upon those questions the court instructs you that you may assume that the defendant did know and did consent that these plaintiffs might act under the 6th section of the 26th rule, and that knowledge and that acquiescence of his authorized the plaintiffs to cancel the first contracts and substitute others in the place of them, and that the defendant would be bound by that substitution. But the court instructs you further that, assuming all that to be true, and assuming that the plaintiffs themselves have told the truth in this case, taking their testimony as the basis, *that* there has been no valid substitution of their contracts for these that have been cancelled, and that the plaintiffs cannot, therefore, for that reason, upon their own testimony, recover anything in this action. If you find, upon that question, the contract to be a valid one, an original contract, and that the defendant is excused or absolved from liability because of this attempted substitution which was not made in accordance with this rule, which it was not, then and in that case the defendant will be entitled to recover upon his cross-action against the plaintiffs for all the money which he advanced in pursuance of these contracts. The court assumes, for the purposes of reaching that question, that the authority to make the contract with the plaintiffs was given as he alleges; that he executed the agency and powers that are conferred upon him; that he had the right, with the defendant's consent, to cancel the first contract and substitute others in their place, according to section 6 of rule 26, and that if he had done so the defend-
111 ant would have been bound by that substitution. But, assuming all that to be true, the court instructs you that there

was no substitution in accordance with that rule, no valid substitution, and that, therefore, by cancelling the first contracts without substituting others in their place, *that* this defendant was absolved from his liability, and is authorized to recover back the amount of money which he paid upon these various contracts. That is all the court thinks it necessary to say to you now; you may take the case and consider it, and return your verdict into court.

The jury after retiring, requesting further instructions, were recalled to the court-room, and thereupon the court further charged them as follows:

The jury by this paper appear to desire me to give them an explanation of the last part of the charge as already given. My charge to you is that if the contract was a valid contract in the first instance the plaintiffs could recover on that contract. Plaintiffs admit that the contracts were cancelled. That would release the defendant, unless the plaintiffs substituted other contracts, in accordance with section 6, rule 26, of the rules of the board of trade. I instruct you as a matter of law that there was not a valid substitution, and if the plaintiffs fail on the ground that the transaction was a gambling transaction defendant is entitled to recover back from the plaintiffs all that he has paid to them.

2nd. That because the question whether there had been a substitution of parties to the contracts in question under the rules of the Board of Trade of Chicago was raised, presented, and tried, not as a question of law, but wholly as a question of fact; and the court erred in withdrawing said question from the jury, for the reason that had the jury found that question in favor of the plaintiffs the court would have been concluded by that finding, because there
112 was evidence tending to show that such substitutions were
made in accordance with the rules and customs of the board trade.

3rd. The court erred in ruling and directing the jury to the effect that the defendant could recover the advances made by him, it appearing from the testimony of the defendant on the trial that in his transactions with the plaintiffs he intended and purposed only to engage in gambling transactions, whereas the court should have ruled and charged that each party should be controlled by his own acknowledged intent, and that if the defendant intended to gamble and the plaintiffs intended only a *bona fide* transaction the latter would be entitled to recover while the former would be barred.

4th. The court erred in charging the jury to the effect that the defendant is entitled to recover his advances, although guilty of an intent and purpose to engage in gambling transactions in virtue of the plaintiffs' innocence and good faith.

5th. The court erred in instructing the jury in effect that they might base their verdict upon either of two inconsistent positions taken by the defendant in his amended answer and counter-claim instead of directing the jury that the defendant must elect to take one of the two positions.

6th. Because the plaintiffs were surprised in a way which ordinary prudence could not have guarded against in this, that the question

whether what the plaintiffs claimed to have done constituted a substitution of parties under the rules of the board of trade as a matter of law was never raised or stated prior to the charge of the court to the jury, but the entire contention between the parties during the trial was whether, as a matter of fact, what was done by the plaintiffs constituted the substitution in question. The question of subsitution involved the true construction of the rules of the board of trade, and had it been raised at any time prior to the trial it would
113 have been easy for the plaintiffs to show that what was done
by them at the request of the defendant was in strict compliance with the uniform usage and custom and interpretation of the then existing rules regulating the conduct of transactions on the board of trade by its members, and was in strict compliance with what is technically termed the contemporaneous construction of the rules since their creation.

7th. The court erred in neglecting and refusing to charge the jury, upon the request of plaintiffs, that by his failure to make any inquiry in relation to the parties to the contracts, either original or substituted, he had waived all right to make any objection on that ground.

8th. The court erred in neglecting and refusing to charge the jury, as requested by the plaintiffs, that the defendant having, at the time when the controversy between himself and the plaintiffs first arose, not made or stated any objection whatever, except that the transactions were gambling deals; and, having rested his opposition to the plaintiffs' claim solely on that ground, had thereby wholly waived the right to set up any other objection at a later stage of the controversy.

9th. The court erred in neglecting and refusing to charge the jury, as requested by the plaintiffs, that in this case, under the law and practice applicable thereto, the defendant cannot at the same time insist upon and have the benefit of the defense that the transactions were gambling transactions, and the inconsistent one of alleging that the plaintiffs had not fulfiled some duty which could not exist unless the transactions had been *bona fide*.

10th. The court erred in neglecting and refusing to charge the jury, as requested, that, if they should believe from the evidence that the plaintiffs advanced the money claimed by them in
114 good faith on account of the defendant and substantially as
stated in their petition, they are entitled to recover the amount thereof with their commissions and interest.

11th. That the verdict of the jury was informal and not returned and presented in accordance with the requirements of law.

12th. That the verdict given in this case is against and contrary to the weight of the evidence and the law in this case.

13th. The court erred in admitting testimony which was objected to by plaintiffs.

EDWARD M. HIGGINS,
FRED. F. GILBERT,
Pl'ff's,
By their attorneys, C. C. BONNEY & FRANCIS J. WING.

And afterwards, to wit, on the 26th day of September, A. D. 1885, it being a day of the April term, 1885, of said court, Hon. John Baxter, circuit judge, presiding, the following judgement and order was made in this case, viz:

Motion Overruled and Judgment on Verdict, &c.

HIGGINS & GILBERT *vs.* JAMES MCCREA.

This day came the parties and come on to be heard the plaintiffs' motion to *be* set aside the verdict heretofore rendered by the jury in this case and for a new trial and was argued by counsel, and thereupon upon consideration it is ordered that said motion be overruled, and thereupon, upon motion of the defendant, it is considered that said defendant, James McCrea, have and recover from Edward M. Higgins and Fred. F. Gilbert, partners, doing business as Higgins and Gilbert, the sum of twenty-two thousand and sixty-two and $\frac{40}{100}$ dollars, the damages so as aforesaid assessed by the jury against said plaintiffs upon his counter-claim, with interest from
the 6th day of May, 1885, together with the costs of suit, to
115 be taxed at $—; and thereupon come the plaintiffs and tender
their bill of exceptions, which is signed, sealed, and ordered
to be made part of this record of this case.

And afterwards, to wit, on the 26th day of September, A. D. 1885, the following bill of exceptions was filed in said cause in said court, viz:

Bill of Exceptions.

In the Circuit Court of the United States, Northern District of Ohio,
Eastern Division.

EDWARD M. HIGGINS and FRED. F. GILBERT *versus* JAMES MCCREA.

Be it remembered that this action came on for trial upon the petition of the plaintiffs, the answer of defendant, and the reply of the plaintiffs, and their answers to the interrogatories filed with defendant's answer.

And the plaintiffs, to maintain the issues on their part, gave the following evidence, to wit:

First. A certain rule and by-law of the Chicago Board of Trade, as follows:

Rule XXVI.

SECTION 6. In case any member of the association, acting as a commission merchant, shall have made purchases or sales by order and for account of another, whether the party for whom any such purchase or sale was made shall be a member of the board of trade or otherwise, and it shall subsequently appear that such trades may
be offset and settled by other trades made by said commission
116 merchant, he shall be deemed authorized to make such off-
set and settlement, and to substitute some person or persons
for the one from or to whom he may have purchased or sold the

property originally: Provided, That in case of such substitution the member or firm making the same shall be held to guarantee to his or their principal the ultimate fulfillment of all the contracts made for account of such principal which have been so transferred, and shall be held liable to such principal for all damages or loss resulting from such substitution.

Second. The testimony of Edward P. Wright, who testified in substance that he had in his possession, and produced to the court, the original telegrams that passed between plaintiffs and defendant with respect to the purchase of the pork and lard mentioned in the petition.

Third. Fred. F. Gilbert, one of the plaintiffs, was produced, who testified in substance as follows:

He first identified and read the telegrams and letters relating to the matters in controversy, and then, in answer to questions propounded, testified as follows: The meaning of the term "August lard" is lard deliverable at any time the seller may choose in the month of August. The meaning of the phrase "future" is property bought for future delivery. "Carrying charges" consists of interest, insurance, storage, and all expenses of carrying property from one month to another. "Storage charges" is the charge of the warehousemen. I am acquainted with James McCrea, and have talked to him personally on the floor of the board of trade in Chicago, and in pursuance of orders received from James McCrea the plaintiffs actually bought the property mentioned in their petition. All the
particulars of those purchases are contained in the answers to
117 the interrogatories on file with the pleadings in this case;
the contracts of purchase were in writing, at first recorded upon a card, and then reduced to writing and signed by the parties; such writing is called a "check slip." The witness then produced all these check slips, representing the purchases involved in this suit.

The witness further stated that none of the transactions were made with an intention or understanding that the property was not to be delivered, and that the property purchased by the plaintiffs for McCrea, in regard to which this suit is brought, was delivered to the plaintiffs on the 1st of August, and was received and paid for by them; that they notified McCrea of such receipt, and asked him to give them orders with respect to its disposition, and notified him that unless he took the property and reimbursed the plaintiffs for their advances the same would be sold for his account; that the defendant, McCrea, gave no orders with respect to the property, and consequently the same was sold by the plaintiffs for his account on the board of trade and the proceeds of such sale credited to his account. The witness produced the warehouse receipts by means of which the property was delivered and the checks given to Geo. W. Higgins and others referred to in the cross-examination, and stated that these checks were given in payment for McCrea's account; that the difference between the purchase and selling price and the consequent loss to the plaintiffs was the sum mentioned in their petition; that under the rules of the board of trade they are entitled to the commissions mentioned in the petition.

The witness then read to the jury the memoranda in writing which were made with respect to these purchases, the first of which was as follows:

Chicago, *May* 19*th*, 1883.

118 George C. Eldridge & Co. have this day sold to Higgins and Gilbert one thousand August pork, $19.50. Check for Aldredge (signed by the parties).

The witness read other memoranda similar to the one last above mentioned, naming other parties.

The cross-examination proceeded as follows:

Q. Did Aldridge & Co. deliver any pork on the first of August for McCrea?

A. Indirectly they did.

Q. Did Aldridge & Co. deliver any pork on the contract that you have read here for McCrea on the 1st of August?

A. He did according to our rules.

Q. Answer my question.

A. No, sir; he did not.

Q. I want to ask you whether it is not true that within a very few days after you made that contract with Aldridge upon the account of McCrea that you cancelled that contract?

A. We offset that contract by substituting another.

Q. Didn't you cancel the contract, so that Eldridge was not bound to deliver you any pork on the 1st of August?

A. Yes, sir—that is, the party that was substituted was bound to deliver.

Q. Will you be kind enough to state upon what considerations you cancelled the contract for the purchase of this thousand barrels of pork from Eldridge. What did he give you to cancel*l* it?

A. There was Eldridge and other parties; there were 250 lots; we received a check of $80 from George Eldridge.

Q. Then, as I understand you, Eldridge gave you $80 and cancelled this contract for a thousand barrels of pork?

A. Yes, sir.

Q. And you cancelled that contract accordingly?

A. Yes, sir.

Q. You also purchased from Mr. Eldridge, as you have re-
119 ported here, 250 tierces of lard on or about the 19th day of
May?

A. We did.

Q. Now, will you be kind enough to tell whether it is not true that you also cancelled that contract?

A. Yes, sir.

Q. When did you cancel*l* that contract?

A. We offset that June 7th.

Q. That is, June 7th you cancelled that, did you?

A. Yes, sir.

Q. Did you notify McCrea that you had cancelled those contracts?

A. No, sir.

Q. After you had cancelled that contract he was not bound to deliver you any lard on that contract, was he?

A. No, sir; the party substituted was, that is, the party we were looking after.

Q. Now, the next contract was on the 22nd of May; bought of G. C. Eldridge & Co., 500 tierces of lard; that is one of the contracts you put in evidence here, is it?

A. Yes, sir.

Q. Will you state whether you cancelled that contract also?

A. We did, June 7th, so far as Eldridge was concerned.

Q. And you cancelled all the contracts that you made for McCrea, either on the 19th or the 22nd, did you not?

A. Yes, sir; but had them coming from other parties.

Q. Now, I'd like to know what you mean by telling the court and jury, in the face and eyes of the cancelling of every contract with these men from whom you had purchased this property for McCrea, that they delivered it on the first of August, and you had to pay for it; what do you mean by that?

A. On May 19th we bought one thousand barrels of pork of George C. Eldridge & Co.; we offset these contracts May 24th, May 23rd, May 25th, and May 24th, and in place of that contact stood upon our books contracts from William Kirkwood & Co., Councilman & Co., Henry Memmer & Co., Seabury, French & Co., and Schoenemann & Co.; it came through quite a number of per-
120 sons until it finally came down to the parties with whom we
had contracts, and they delivered us the stuff, and the sum total we paid the parties for that stuff, together with the advances we paid out theretofore, makes the exact amount of $198,095. What we paid for the stuff, together with the amount we had paid out before, made the amount of money we paid out for James McCrea the sum mentioned. We did that according to our rules on the board.

Q. Then it is not true, is it, that any one of these persons from whom you purchased pork and lard upon account of McCrea, on the 19th or 22nd of May, in pursuance of those contracts, made delivery of any pork or lard to you?

A. No, sir.

Q. You have said, by way of your explanation, that you substituted one contract for another; did you notify Mr. McRea of any substitution?

A. No, sir.

Q. You keep books of account, do you not, in regard to your purchases?

A. Yes, sir.

Q. Do your books show from whom you purchased this property for McCrea?

A. Yes, sir.

Q. Do your books show who or what contracts you substituted when you made the change you have mentioned?

A. Yes, sir. (Witness produces book.)

Q. Will you turn now to the book and state how you made the entry upon the book of the purchases first made for McCrea on the 19th and 22nd of May; tell what there is upon your book to indicate that this contract is made on account of McCrea?

A. There are the columns "Date," "Number," "Bought of," "Account," "Quantity," "Terms," "Price," "Date of settlement," "Margins," "Folio."

Q. There is something here to show whose account?

A. Yes, sir; May 19th there is an entry we bought one
121 thousand barrels on account of James McCrea at $9.50.

Q. A few days thereafter, as you have told us, you commenced cancelling. Now, will you turn to any of the additional entries upon your books and let us see if you have his name there upon the substituted contracts?

A. No, sir.

Q. I want to know whether you made any entry upon your purchase-book, or any other book of yours, the day you gave up any of those contracts, showing what contracts took its place?

A. We made no mark on the book, sir.

Q. Did you not, in answering questions about this in Chicago, say in answer to this question: "Will you tell us who was owing McCrea any pork then?" Didn't you answer Higgins and Gilbert?

A. I did, sir.

Q. So, as I understand you, after you had cancelled these contracts of purchase which you made upon his account, the only person or persons in Chicago that McCrea would have the right to call upon for pork and lard was Higgins and Gilbert, was it not?

A. Yes, sir; that is the only party he ever looked to.

Q. Then Higgins and Gilbert owed him the pork after that, didn't they?

A. Yes, sir.

Q. In answer to that question, put to you at Chicago, did you not say, "Certainly, Higgins and Gilbert was the house he looked to?"

A. Yes, sir.

Q. I will ask you to turn to the rule that bears upon the subject of substitution. You refer to rule No. 26, do you not?

A. Yes, sir; section 6 of rule 26.

Q. That is the rule bearing upon the question of substitution, as I understand you?

A. Yes, sir.

Q. The Chicago Board of Trade, as I understand you, is a corporation?

A. Yes, sir.

Q. With a president and other officers?

A. Yes, sir.

Q. Will you tell me a little more about this book, turning
122 to the pages or page that covers the purchases made in May
for Mr. McCrea? Now, will you explain what headings you have here on this book, beginning with the first?

A. On the left-hand page is "Bought;" on the right-hand page is

"Sold." We fill in this page whether it is August or September pork. The next heading is "Date;" that means the date of purchase. The next is "Number;" that is so that the trade can be numbered, if desired. The next is "Bought of;" that shows from whom the purchase was made; that is, the party with whom we have the contract. The next is "Account;" that shows upon whose account the purchase was made; that is, for whom we made it. Our house is a commission house, so that this account shows for whom we bought it. The next is "Quantity;" that shows how much we bought. The next, "Terms;" that means the time of delivery. The next is "Price;" that is, the price to be paid. The next, "Folio;" that means what book entered in. The next is "Date of Settlement;" that means the date of offset. The next, the price it is offset against. The next, with whom it is offset.

Q. I do not see any place here where you are to mark the delivery of the goods?

A. That comes under the head "With whom offset."

Q. Your deals are offsets?

A. Yes, sir; or deliveries, the same thing.

Q. You gave a check to George W. Higgins & Co. for a large amount. Had you made any contracts in May for any pork or lard from George W. Higgins & Co. on account of my client?

A. No, sir.

Q. If you made any contract with him for the purchase of any pork or lard you made it upon some other man's order. Can you tell upon whose order?

A. He delivered us 1,500 barrels of pork that we had sold for his account.

123 Q. To whom had you sold it for his account?

A. Culver & Co., on June 27.

Q. The 27th of June he had sold to Culver & Co. the pork which you gave him this check for?

A. Yes, sir; we had sold it on his account and on his order.

Q. And, as I understand you, it was in pursuance of that contract and not upon any contract upon McCrea's account that you gave him that check?

A. We paid him for the stuff that came in.

Q. Can you connect the contract of purchase with its fulfillment? As I understand you, you sold on account of George W. Higgins & Co. to Culver & Co. 1,500 barrels of pork?

A. Yes, sir.

Q. Now, so far as Culver & Co. was concerned, that transaction was made upon the 27th day of June, and Higgins & Co. fulfilled that contract by the delivery of pork on the 1st day of August; is that correct?

A. Yes, sir; to us.

Q. Was it on that contract that you gave him the check that you now produce?

A. Yes, sir.

The witness further stated that the check to Bottsford & Co. for

$3,961.50 was paid on account of contract made with them June 28th, by which they bought of Henry Bottsford & Co. 250 barrels of mess pork, August delivery, at $16.25 a barrel. That purchase was made on account of Charles H. Lithgold. When that pork was delivered August 1st the check was given. The check given to T. H. Denton & Co. was given on account of a transaction of July 26th, when we bought of Denton & Co. on account of J. P. Taylor 250 barrels of mess pork, August delivery. The pork was delivered and paid for. The check to D. W. McFarland & Co. was on account of a transaction of June 11th, when we bought 250 barrels of mess pork on account of J. P. Taylor. The pork was delivered and paid for. The check to John Gaynor was on account of a purchase of 250
124 barrels of mess pork from Baldwin & Stone, account of Edward Gilbert. The pork was delivered August 1st and paid for. The check to Poole, Kent & Co. was on account of a purchase of 250 barrels of August pork of Poole, Kent & Co. I don't know when the contract was made; it was turned over to us on the 1st of August, and we gave our check for the pork. The other checks we paid out for differences on their offsets, and altogether amounted to the sum we paid for James McCrea. The only checks which we gave in payment on the 1st of August are the checks in regard to which you have asked me. The money paid to us from time to time by James McCrea as stated in his answer.

Redirect examination:

Witness is requested to turn to section 6, rule 26, under which substitutions are made, and thereupon reads the rule.

Q. State whether in any case, and, if so, name the case, with price, date, and amount, you cancelled any contract, of which you have testified, without at the same time substituting another contract for it.

A. We never offset any of those contracts we made for James McCrea in the world that we did not have some other contract where that stuff was coming from; never.

Q. In answer to a question put to you by Judge Burke as to whether you put any mark on the book to indicate what particular party was substituted for the one whose contract was cancelled, you said "no," and tried to explain it; go on and finish your explanation to the jury.

A. There was no particular mark put on that contract. But the very fact of that contract being open on our books at that time after we had offset the sales the contract was marked; the contract marked itself by being open.

Q. State whether any particular person was substituted for Eldridge when the contract with him was cancelled; and, if so,
125 name a person.

A. The first thousand barrels of pork we bought of George C. Eldridge we substituted William Kirkwood, 250 barrels; Charles Councilman & Co., 250 barrels; Schoeneman & Co., 250 barrels; Henry Memmor & Co., 250 barrels.

Q. How do you know that these particular persons were substituted for Eldridge when his contract was cancelled?

A. Why, we looked the trades up, and those were the trades that were open.

Q. Suppose three or four times as many trades were open as would have been required to have filled that thousand barrels from Eldridge; how could you tell which belonged to him and which to the other parties?

A. The very first that were delivered to us would belong to the oldest customers we had.

Q. You mean to say to the oldest customers in point of time take the first property that comes in to you?

A. The first property that came to us we would reserve for the oldest customer; just as it came in we would reserve it for our oldest customer.

The COURT: That, of course, you could not decide until the property was delivered?

A. No, sir; not finally.

Q. The first received stands as substituted?

A. Yes, sir.

Q. Then it is not necessary to put any mark on your books to show this?

A. They mark themselves by being open.

Q. Now, you may state whether the finally substituted parties for this firm, whom the purchases were first made from, were those that delivered the property to you on the 1st of August, as you have testified.

A. Yes, sir.

Q. State whether deliveries of property on the board of trade are made by warehouse receipts only.

A. Yes, sir.

To further maintain the issues on the part of the plaintiffs HENRY D. GILBERT was called, who testified in substance as follows:

126 I am acquainted with James McCrea; have had conversation with him about the rules and customs of the board of trade. In a conversation held with him in June, 1883, he said he knew all about the rules of the board of trade; that we could not tell him anything about the priv-es or customs of the board of trade at that time. At another time, in 1880, in a conversation with me, he said that he was familiar with the customs of the board of trade, and the way business was done in Chicago.

To further maintain the issue on the part of the plaintiffs they introduced, among others, the following telegrams and letters:

CLEVELAND, OHIO, *May 18th*, 1883.

Higgins and Gilbert:

Buy one thousand pork at fifty, one thousand lard seventy-five, August.

JAMES McCREA.

CHICAGO, ILL'S, *May 19th*, 1883.

James McCrea, Cleveland, Ohio:

All right. We put in thousand pork, fifty; thousand lard, three-quarters.

HIGGINS AND GILBERT.

CLEVELAND, OHIO, *May 19th*, 1883.

Higgins & Gilbert:

All right and satisfactory. Just what it should be. Thousand pork; thousand lard; limits. See market lower on much further drop. Will send more orders.

JAMES McCREA.

CLEVELAND, OHIO, *May 22nd*, 1883.

Higgins & Gilbert:

Buy two thousand pork, two thousand lard; seventy or eighty, or less; August. Answer.

JAMES McCREA.

CHICAGO, ILL'S, *May 22nd*, 1883.

James McCrea, Cleveland, Ohio:

Bought two thousand August pork, eighty-two half; thousand August lard, eleven eighty-two half. Is balance order open at eighty and seventy? Answer.

HIGGINS & GILBERT.

CLEVELAND, OHIO, *May 22nd*, 1883.

Higgins & Gilbert:

Fill balance of order at market—low as possible.

JAMES McCREA.

127 CHICAGO, ILLS., *May 22nd*, 1883.

James McCrea, Cleveland, Ohio:

Bought thousand August pork, nineteen ninety-five; two fifty August lard, eleven eighty-five; after balance lard.

HIGGINS & GILBERT.

CHICAGO, ILLS., *May 22nd*, 1883.

James McCrea, Cleveland, Ohio:

Bought seven hundred and fifty August lard, eleven eighty-five. Please deposit three thousand dollars margins in our bank. Answer.

HIGGINS & GILBERT.

CLEVELAND, OHIO, *June 16th*, 1883.

Higgins & Gilbert:

You must not close deal; am arranging with bank for money.

JAMES McCREA.

CLEVELAND, OHIO, *June 19th*, 1883.

Higgins & Gilbert:

Bank will not advance this morning. I feel confident will get plenty of money to send you in a day or two as soon as market steadies. You must carry my property.

JAMES McCREA.

CHICAGO, *August 1st*, 1883.

James McCrea, Cleveland, Ohio:

Your lard and pork has been delivered to us to-day. You must take it and pay for it, or it will be immediately sold under the rules of the board of trade, and you held for all losses. Pay our Mr. H. D. Gilbert balance due as *as* account rendered if you do not want property sold.

HIGGINS & GILBERT.

CHICAGO, ILLS., *August 1st*, 1883.

James McCrea, Cleveland, Ohio:

Sold you three thousand pork at thirteen thirty-five; three thousand lard eight fifty.

HIGGINS & GILBERT.

Letters.

CLEVELAND, *May 18th*, 1883.

Mess. Higgins & Gilbert:

Yours rec'd. Wired you buy one thousand pork, fifty-one
128 thousand lard, seventy-five August. Have your message—
August pork, 70; lard, 80. See pork closed 47 and ½; lard,
77 & ½. When I give you an order with a limit it is your place to wait the day out. Try to fill it. I am posted, and if my judgment is to change my limit I will do so. I can tell from ticker whether you can fill order or not.

Yours,

JAMES McCREA.

CHICAGO, *May 19th*, 1883.

James McCrea, Esq., Cleveland, Ohio:

Have your several T. D's, also letter of yesterday, resulting in the purchase for your account of 1,000 barrels August pork at 19.50, 1,000 tierces August lard at 11.75. We enclose "memo." We think you are getting in about on the bottom. One thing *in* certain Armous owns all the cash pork here. This break has been a regular Armour break. The cash demand does not seem to be heavy. Yesterday there was shipments of 1,000,000 pounds meat alone. The lard cost us 11.77½; pork, 19.50.

Yours truly,

HIGGINS & GILBERT, *G.*

CLEVELAND, *June 16th*, 1883—4.10 p. m.

Mess. Higgins & Gilbert.

DEAR SIRS: I have your several telegrams. The excitement here of McGeoh failure is in every mouth, and when in my bank I expected to get money this morning I could not get it on warehouse receipts of provisions, the same as I have always used as securities, and were never refused before. I have lots of property, and in ordinary times would quickly bring money, but the panic in Chicago frightened banks on provision securities. I went to another bank, where I was promised $25,000 in case I needed it several days since, but the president was out of the city, and the cashier could do nothing in his absence. Now, I have in the hands of Hoagland & Clark about $30,000. This has taken my ready cash. I have plenty of money on my books coming in from my jobbing 129 trade, and I expect in a day or so, when the excitement is over, the bank will give me money. In the meantime I shall expect you to hold my property for me until I can turn myself. I will deposit money to your credit just as fast as I can get it. I look for a sharp advance in provisions next week.

Yours truly,

JAMES McCREA.

CLEVELAND, *July 7th*, 1883.

Mess. Higgins & Gilbert, Chicago, Ill.

DEAR SIRS: Referring to late communications to me permit me to say that I do not care to do anything which can in any way change our legal relations as to margin deal you refer to. Of course you understand as well as I the nature of our transactions, and it would be useless to discuss them more.

Yours respectfully, JAMES McCREA.

CLEVELAND, OHIO, *July 16th*, 1883.

Mess. Higgins & Gilbert.

DEAR SIRS: I have your favor of 9th inst. and later dates. Your reference to "carrying property for me" you must intend as a joke. You have no property of mine to carry and never have had in any of our transactions; neither have you any legitimate claim upon me for money for what you are pleased to term "advance on my property," as I have no property or contracts for property, and there has been and is nothing to make advances upon. The above will sufficiently explain my position.

Respectfully, JAMES McCREA.

CLEVELAND, OHIO, *July 24th*, 1883.

Mess. Higgins & Gilbert.

DEAR SIRS: It has indirectly come to my ears that even in the face of our correspondence the past few weeks in regard to certain deals on the board you are claiming to be acting for me and to be "carrying property for me." Any action which you take or have

130 taken in these matters is at your peril. Our transactions, as you well know, have been mere gambling deals, and, as you have been duly notified, I long since repudiated the same. I again notify you that I will advance no more money for margins or otherwise, or in any way recognize any pretended contracts we may have made. All our deals have been gambling, pure and simple, and, as you well know, I long since laid down my hand and for many weeks have been out of the game.

Respectfully, JAMES McCREA.

CHICAGO, *July 28th*, 1883.

James McCrea, Esq., Cleveland, Ohio.

DEAR SIR: You are hereby notified that the property bought by us for you on your orders, being 3,000 barrels pork and 3,000 tierces lard, delivered at any time within the month of August, will undoubtedly be delivered to us for your account on the first day of August next, at our office, when and where you will please to be ready to receive and pay for the same at contract prices, amounting to 153,190$\frac{50}{100}$ (as per statement enclosed). Should you fail to receive and pay for the property upon its delivery to us, it will be at once sold under the rules of the board, and we shall hold you liable for the balance. Should you not desire to attend for the purpose of receiving the property, you will please see that the funds are in our hands by the day named, as the state of the market makes it certain, in our judgment, that we shall be compelled to take the property and pay for it on that day. We must insist also that you promptly deposit $25,000 (twenty-five thousand dollars) to our credit in the National City Bank, Cleveland, Ohio, for the balance of margin due this day from you to us on account of depreciation in value of property.

Yours truly, HIGGINS AND GILBERT.

131 CHICAGO, *August 1st*, 1883.

James McCrea, Esq.

DEAR SIR: Not having heard from you in reply to our message notifying you that your pork and lard has been delivered, we sold your stuff as per enclosed memoranda. We will forward statement of account as soon as possible.

Yours truly, HIGGINS & GILBERT.

Whereupon the plaintiff- rested.

And the defendant, to maintain the issues joined on his part, introduced the following evidence:

Deposition of James McCrea.

JAMES McCREA, the defendant, being duly sworn, testified as follows:

Direct examination by Judge BURKE:

At the time I had the deals with Higgins & Gilbert I had no knowledge of the rules and by-laws of the board of trade. I had no knowledge of the rule upon the question of substitution, which has been read here; that is to say, section No. 6, of rule 26. I had no knowledge that Higgins & Gilbert had really cancelled the contracts they had made. I know Mr. H. D. Gilbert, who has testified, and have heard his testimony. I had a great many conversations with him. I never stated to him that I was acquainted with the rule. I was acquainted with the manner of dealing. I had a ticket to give me market quotations. I said to him I was posted in the market, and I had a ticket always to refer to. I never said that I was familiar with the rules and customs of the board of trade, and I was not. I was only on the board of trade once when I went for money in February, 1883; that is the only time. I did not see the rules and by-laws of the board, and I did not hear anybody recite them or say what they were.

132 Upon cross-examination by Mr. BONNEY the witness said:

I commenced dealing in the Chicago Board of Trade about ten years ago, and have kept up dealing occasionaly ever since; and have been very seldom in the board of trade—about once in four years; have dealt with four different parties in such transactions as are involved in this case. I do not remember when I first learned the meaning of the phrase "changing deals from one month to another." I used that phrase in my letters, and it simply means paying the difference—the premiums from month to month—as I understand it. When I wrote the letter to Higgins and Gilbert, and said "You must must carry my property," I meant the deal.

Q. Do you mean to say that all the while this transaction was going on you thought it was gambling?

A. Why, certainly.

Q. Then will you explain to the jury why, up to the 7th day of July, you used an expression the other way, and then you discovered it was gambling?

A. I always knew it was gambling. I never bought any property for future delivery and received it, or expected to. I never bought any property, or any pork or lard, or an option, for future delivery and received it. I never intended to receive it. I never intended to receive this or any portion of it. I had no use for it; all I wanted was the difference, if it went my way.

Q. Now, I will ask you to tell us whether you have not done that identical thing yourself—old that property for future delivery and got your money?

A. No, sir.

Q. Didn't you send some pork down to New York for a future sale on a future delivery and get your money?

A. Well, that was my own packing; of course, I sold actual pork. I never sent any pork to Chicago.

Q. Now, let me ask you to tell us what the difference is
133 between pork for future delivery out of your packing house,
and pork out of the house of Armour or George W. Higgins?

A. I never bought any pork of Armour or George W. Higgins or any other packing house for future delivery.

Q. Did the man in New York buy out of your packing house for future delivery in any different way?

A. I packed pork and shipped it to a commission house and they sold.

Q. In your telegram dated December 28th, 1882, addressed to Higgins & Gilbert, you say you don't think "deliveries will be large;" please tell us what the phrase "deliveries will be large" means.

A. Chicago brokers, for instance, agents, Higgins & Gilbert, they will telegraph me, if I am speculating with them, say about the first of the month, or before the first of the month, "delivery is light" or "delivery is heavy" without my asking such a question; I may, if I am looking towards the course of deliveries, ask them by telegraph how are the deliveries; they are called deliveries—settlements.

Q. You mean to say, then, that a delivery and settlement are the same thing?

A. That is the way I understand it; I do not understand there is any delivery of property.

Q. Now, I will ask you what right you have when you make a contract to change it?

A. Well, that is a custom; for instance, if I cannot make money—the market has not gone in my favor, and I cannot make money for January—I will tell them to change to March; if I cannot make money in March I will them to change to June. That is the way I have dealt.

Q. Suppose the party with whom the contract was outstanding actually brings forward the pork?

A. That has never been expected or contemplated.

Q. By whom?

A. By me or the parties with whom I dealt.

134 Q. What object had you in asking them to carry your property at that time?

A. Thinking I might perhaps win.

Q. Hadn't the market heavily declined since the McGeoch failure?

A. Well, it might have recovered possibly.

Q. When did you first make up your mind to take the position assumed in your letter of July 11th?

A. I don't remember.

To further maintain the issues joined on his part defendant introduced the depositions of the plaintiffs, Fred. F. Gilbert and Edward M. Higgins, taken before Philip A. Hoyne, commissioner of the circuit court, northern district of Illinois, and filed in this case, which depositions were read in evidence to the jury as follows:

United States Circuit Court, Northern District of Ohio, Eastern Division.

EDWARD M. HIGGINS *et al.*, Plaintiff-,
vs.
JAMES McCREA, Defendant.

Parties met, pursuant to notice, Wednesday, the 8th day of April,

A. D. 1885, at 10 o'clock in the forenoon, at the office of Philip A. Hoyne, a commissioner of the circuit court of the United States for the northern district of Illinois, at room- Nos. 52 and 53, Government Building, in the city of Chicago, in the said northern district of Illinois, in the State aforesaid—present, C. C. Bonney, Esq., of Chicago, Illinois, and F. J. Wing, Esq., of Cleveland, Ohio, of counsel for plaintiffs; S. Burke and Wm. B. Sanders, Esq., of Cleveland, Ohio, and Francis A. Riddle, Esq., of Chicago, Illinois, of counsel for the defendant, and Fred. F. Gilber, one of the plaintiffs in
135 this cause, a witness produced by and upon the part of the defendant. The plaintiffs in this action, protesting that they have already been fully examined in this case on interrogatories, and that in strict law they cannot be further required to be examined herein before the trial, nevertheless, *upon* pursuant to a suggestion by the court in that behalf, they appear pursuant to the notice served upon them and hereto attached for further examination, saving all their just rights and privileges in the premises.

Deposition of F. F. Gilbert.

FRED. F. GILBERT, plaintiff in this case, produced by and upon the part of defendant, — duly sworn, examined in chief by S. Burke, Esq., testified as follows:

Q. State your age and place of residence, Mr. Gilbert.

A. Twenty-six; Chicago, Illinois.

Q. Are you a member of the firm of Higgins & Gilbert?

A. Yes, sir.

Q. How long has that firm been in business?

A. It started M'ch 10, 1880.

Q. Are you acquainted with the defendant in this case, Mr. James McCrea?

A. Yes, sir.

Q. When did your firm commence doing business with Mr. McCrea?

A. In 1881.

Q. Do you remember what the first business transaction was that you had with him?

A. I couldn't say the very first as to what it was, but shipments of stuff to him at Cleveland, Ohio.

Q. Have you a book of account of your transactions with him?

A. Yes, sir.

Q. Where are the books that contain an account of these transactions?

A. Room 9, 123 La Salle St.

Q. Are you willing to produce them upon this examination?

A. Yes; every book that pertains to these transactions.

Q. You have had correspondence with him at different times, have you not?

A. Yes, sir.

Q. Have you preserved that correspondence?

A. Yes, sir.

Q. You are ready to produce that correspondence, are you,
136 upon this examination?

A. We will produce it if we are required to.

Q. What objection have you to producing it?

A. Well, most of our case—the strongest points of our case—are in his letters and telegrams to us, and his orders, and everything.

Q. Within what time can you produce that correspondence?

A. Any moment that you say that we can get to the office and to the bank where they are in vaults we will produce it.

Q. Which member of your firm had charge of the dealings with Mr. McCrea?

A. Well, I always run all that part of the business when I was here, and probably made all the trades until this last August's contracts. I was south at that time several months sick, so that probably was bought by my partner. I assumed charge of that department as soon as I got back.

Q. Are you able, without your books, to give us an account of the different transactions that you have had with the defendant, McCrea?

A. No, sir; not in my mind. I couldn't remember all the transactions. We have given them to you in the answers to interrogatories. I can give you the aggregate, but not the prices and everything.

Q. Refreshing your memory by what you have given to us, could you give the information in detail?

A. With this in my hand (answers to interrogatories) yes; certainly.

Q. Will you be kind enough to state the first item of unsettled dealings between your firm and the defendant now existing; what is the first unsettled item?

A. Do you mean the first lot of stuff we bought on this last contract?

Q. I mean this: In your petition you state that under his direction you made a purchase of certain pork and lard, and now I want to have you state the first item that you purchased that is unsettled, if any?

A. We bought 1,000 barrels of pork of Geo. C. Eldridge & Co., at $19.50 per barrel; 1,000 tierces of lard. We bought 500
137 of Fowler Brothers, at $11.77½ per hundred pounds; 250 of Geo. C. Eldridge & Co. at $11.77½ per hundred pounds; 250 tierces of Geo. D. Baldwin & Co. at $11.77½ per hundred pounds. That first was reported $11.75, and we took the loss at $80; an error in filling the order; a misunderstanding.

Q. Be kind enough to state upon what order you made that purchase, whether verbal or in writing; and, if in writing, can you produce the order itself?

A. We bought that upon an order by telegraph; we have the telegram that we received, and will produce it.

Q. Mr. Gilbert, that purchase under this 1st of August order, as I understand you, was a purchase from the firm of Eldridge & Co.?

A. Yes; George C. Eldridge & Company, 1,000 barrels at $19.50 per barrel.

Q. What time was that pork to be delivered?

A. During August, 1883.

Q. It was purchased on the 1st day of the month, and was to be delivered when?

A. It was purchased on the 19th day of May, I think, and was to be delivered during the month of August.

Q. The date of the purchase, then, was not August?

A. No, sir.

Q. But was upon the 19th day of May, 1883?

A. May 19, 1883.

Q. Did you purchase the pork in the name of McCrea or in your own name?

A. In the name of Higgins & Gilbert, sir.

Q. You didn't purchase in the name of McCrea?

A. No, sir; they wouldn't take any other man's name.

Q. Did you try it?

A. No, sir.

Q. You made no effort to execute the order in the name of McCrea, then?

A. No, sir; because it isn't customary to give the name of a man that isn't a member of the exchange.

Q. Please confine your answers to my questions. You didn't make any attempt to execute the orders in his name, did you, and as agent?

A. Such a thing is never done, sir.

Q. The last question is repeated.

138 A. We executed the order as agent, but gave our own name because he gave no order to give his name.

Q. You made no attempt to purchase in his name, did you?

A. Why, no; certainly not. If we should try to do that we should be laughed it.

Q. Did you buy that particular lot, that thousand barrels of pork, from Eldridge & Company for Mr. McCrea; was that the purpose of it?

A. Yes; for Mr. McCrea's account.

Q. You purchased that particular lot on purpose for McCrea?

A. Yes, sir.

Q. Did you report the purchase to him?

A. To Mr. McCrea; yes, sir.

Q. Did you state to him from whom you made the purchase?

A. No, sir.

Q. Why not?

A. Because he looked to us entirely for it, and held us responsible.

Q. What do you mean by "looked to you?"

A. He looked to us to fulfill the contract; that is what we got the commission for.

Q. To fulfill the contract?

A. Certainly. If in August pork was $25 a barrel, instead of about $13 or $12, Mr. McCrea would have called on us for that thousand barrels of pork. Higgins & Gilbert would have either had to ship to him, if he had ordered it shipped, or if he had ordered it sold, we would have had to sell it and give him the profit made on it, or, if he had complained to the board of trade, they would have put us off for not doing it.

Q. You purchased, as I understand, in your own name, upon account of McCrea, a thousand barrels of pork from Eldridge & Company?

A. Yes, sir.

Q. That pork was to be delivered in August?

A. Yes, sir.

Q. At any time in August at the option of the seller?

A. Yes, sir.

Q. Now, do I understand you that if Eldridge & Co. had failed to deliver that pork in August, you would have been bound to deliver it yourselves?

139 A. Yes; if pork had been $ 100 a barrel we would have had to deliver that pork.

Q. Now, inasmuch as you were simply acting as agents for McCrea in making the purchase, and inasmuch as you complied with your duty as agents in making the purchase, how do you claim that you made yourselves personally liable to respond?

Question objected to by counsel for plaintiff because the question assumes that the plaintiff, Gilbert, stated that he was acting only as agent.

A. Well, we were in the relation of principal and agent to McCrea.

Q. How did you come to sustain the relation of principal to McCrea in the park purchase?

A. Well, if we had failed to fulfill that contract and Mr. McCrea had made a complaint to the directors of the board of trade, they would have investigated the case and made us fulfill the contract and carry it out under a rule. I don't know the number; I cannot give it now: a rule that allows us to offset contracts and become the principal in the contract, in order to facilitate the business.

Q. Now, let us see if we understand, as far as we have gotten along, about this thousand barrels of pork. My understanding is that you got a certain telegram from Mr. McCrea directing you to purchase a thousand barrels of pork for delivery to him in August: is that correct?

A. Yes, sir.

Q. That acting under that telegram you purchased for him and upon his account, either upon the day you received it or near that day, a thousand barrels of pork of Eldridge & Company; is that correct?

A. Yes, sir

Q. In making the purchase from Eldridge & Co. you acted as the agents of McCrea, did you?

A. Eldridge didn't know McCrea in the transaction.

Q. In making the purchase from Eldridge & Co. were you acting as his agents in the purchase of that pork, as you understand it?

A. We were acting as an agent that was responsible for the fulfillment of the contract.

140 Q. Will you be kind enough to be a little more specific, and state whether in making the purchase from Eldridge & Co. of the thousand barrels of pork you purchased that pork upon the account of your own firm, or upon the account of James McCrea?

A. We purchased upon account of McCrea.

Q. Then if you purchased upon the account of McCrea you purchased as his agents, did you?

A. We purchased as an agent who had to fulfill the contract.

Q. With whom?

A. James McCrea. If anything happened to Eldridge & Company, we had to fulfill the contract.

Q. Now, as I understand you, then, we have got the facts in regard to that transaction. Will you be kind enough now to tell me whether Eldridge & Company ever delivered that thousand barrels of pork?

A. They either delivered it or it was offset by some other contract.

Q. Will you be kind enough to tell me, sir, whether Eldridge & Company did deliver to you the particular thousand barrels of pork that you bought as an agent of McCrea at any time?

A. They delivered it in this shape—by offsetting it against one of our sold contracts.

Q. Will you answer my question directly now?

A. Do you mean they delivered right to us on the first day of August—they fulfilled their contract with us?

Q. Do you understand what it is to deliver a thousand borrels of pork upon a particular day?

A. Yes, sir.

Q. Now, then, I want to know whether on any day in August, 1883, the firm of Eldridge & Company did deliver to your firm the particular thousand barrels of polk that was embraced in that purchase of the 19th of May?

A. No, sir?

Q. No, sir.

A. No, sir; we have shown that in our interrogatories who did deliver it.

141 Q. Then, as I under-stand you, the particular thousand barrels of pork that you purchased from Eldridge & Company upon the account of James McCrea upon the 19th of May, 1883, that particular thousand barrels of pork was never delivered to you?

A. The exact grade was delivered to us.

Q. What I mean is this: I want to know whether that particular thousand barrels of pork that you bought upon McCrea's account and upon his order in May, 1883, whether that particular thousand barrels of pork was delivered to you, to your firm, by Eldridge and Company.

Question objected to by Mr. Wing as assuming that any particular thousand barrels of pork was purchased.

A. No, sir; it was not delivered by Eldridge and Company.

Q. Why didn't Eldridge & Company make delivery according to the contract?

A. Because we mutually agreed to offset his contracts against some other contracts, and in that case open another contract on our bought side, and through that party the stuff was coming.

Q When, if ever, did you release Eldridge & Company from that contract? Please refresh your memory and answer.

A. Do you want the dates?

Q. I want the facts.

A. I can look up the dates of the offset and tell you. (Referring to paper held by witness.) May 24, 250 barrels was offset; May 23, May 25, and May 24, 250 barrels each.

Q. Now, as I understand you, upon the 19th day of May you purchased from Eldridge & Company a thousand barrels of pork upon the account of McCrea and reported to him your purchase?

A. Well, there was a little misunderstanding about that telegram. He sent a telegram on the 18th, and there was a misunderstanding about filling it, and it wasn't filled until the 19th. There was a misunderstanding as to whether the order was open on the
142 afternoon of the 18th, explained by letters and telegrams.

Q. As I understand you, you made the purchase and reported it to him on the 19th day of May, or about that time?

A. Yes; that is right.

Q. And you relieved Eldridge & Company between the 19th and 24th of May from the delivery of that pork?

A. The 250 barrels on the 25th—23rd or 25th—when the offset was made.

Q. You relieved Eldridge & Co. from the performance of that contract, didn't you, from the delivery of that particular lot of pork, in August, didn't you?

A. Yes, according to the rules of the board of trade. I can't give you the rule. We acted according to the rule.

Q. You know whether it is true or not, Mr. Gilbert, that you released, right in the same month, Eldridge & Co. from the performance of that contract; you know whether that is true.

A. That is true; we did it under the rules.

Q. Now, what I want to know is, did you report that fact to McCrea?

A. No, sir. McCrea didn't know who we had the stuff coming from. He was looking to us, though. Of course, we never reported.

Q. McCrea was looking "to us." What do you mean?

A. McCrea was looking to Higgins & Gilbert for the fulfillment of the contract.

Q. He had made no contract with Higgins & Gilbert?

A. McCrea?

Q. Yes, sir.

A. Most assuredly.

Q. Where did he make a contract with you—how was it done?

A. He requested us to buy the thousand barrels of pork, and we bought it. He looked right to Higgins & Gilbert.

Q. Go on and tell how, if you were acting as his agent in dealing with the other men, how you became a principal in dealing with him.

A. Principal to George Eldridge & Co.

Q. And were you to McCrea also?

A. Agents and principals to McCrea.

143 Q. Well, how were you principals?

A. Because he looked to us for the fulfillment of the contract, and always had in all transactions on the board of trade—he looked to us for the fulfillment of that contract, as he afterwards notified us.

Q. Now, as I understand you, you took the liberty of releasing Eldridge & Co. from delivering any of that pork in August, didn't you?

A. Yes, under the rules of the board.

Q. You released him under the rules of the board?

A. We released him from that contract, as the board of trade allowed us to do under the rules.

Q. Will you be kind enough to tell me whether, after you had released him under the rules of the board, he was still bound to give the pork?

A. No, sir; it was coming from some one else.

Q. Will you be kind enough to tell us what, if anything, you paid Eldridge & Co. to be released from that contract?

A. Sometimes, in offsetting a contract like that, we might pay Eldridge or might pay some one else.

Q. What did you pay George C. Eldridge & Company, if anything, to be released from that contract?

A. On that thousand barrels?

Q. Yes, sir.

A. We collected $81.25.

Q. You didn't pay him anything then, did you, to be released on the contract?

A. No, sir.

Q. But, on the contrary, he paid you something?

A. $81.25.

Q. Did you report that fact to Mr. McCrea?

A. No, sir.

Q. Did you give him any credit for that money?

A. No, sir; pork ac.

Q. Did you have any further or other order to purchase pork—this particular thousand barrels for McCrea—than the telegram of the 18th or 19th of May?

A. No, sir.

Q. No orders to buy it except as you undertook to do so on the purchase from Eldridge?

A. We only received one order of the 18th for that lot.

Q. As I understand you, you didn't report to McCrea the disposition which you made of that lot of pork, or of that contract which you had entered into on his account; you didn't report
144 that to him?

A. No, sir.

Q. And you didn't report to him what money you had received as a condition for surrendering that contract and giving it up?

A. No, sir.

Q. At or about the same time, as I understand your complaint, you received an order from Mr. McCrea to purchase 1,000 tierces of prime steam lard?

A. Yes, sir.

Q. You remember about that, do you?

A. I wasn't here at the time; but I know it was bought and everything.

Q. Your books will show about that?

A. Yes, sir.

Q. Will you be kind enough to inform me whether your firm executed that order or not?

A. The order was executed; yes, sir.

Q. Will you be kind enough to state now whether you reported to Mr. McCrea the purchase that you had made of lard upon his account?

A. We reported it at $11.75, because that was his limit; it was our error in not filling the order; we bought it at $11.77½, and we charged the difference to ourselves. It was a misunderstanding, and he insisted on our fulfilling the contract, so we paid a little above what the order was and took the loss ourselves.

Q. Was that order to purchase the lard contained in the same message ordering the purchase of the pork, or in a separate message?

A. I think it was in the same, but I am not positive; I can show you the dispatch.

Q. Did you or your firm report to Mr. McCrea from whom you had made the purchase of this thousand tierces of prime steam lard?

A. No, sir; we only told him that we had lost the $80 in filling the order.

Q. You reported that you had, however, bought the lard upon his account?

A. Yes, sir.

Q. But you didn't state to him from whom you had made the purchase?

A. No, sir.

145 Q. Will you be kind enough to state whether in the month of August, 1883, any one of the persons or firms from whom you purchased that lard made delivery of it?

A. No, sir.

Q. They did not? What became of that land—the particular lots that you contracted for upon his account at that time?

A. The contracts with these parties was offset; the whole thousand tierces was offset.

Q. With whom?

A. Directly with Fowler Brothers; 500 on June 28th, 250 on June 7th, with McCormick, Adams & Co., and 250 May 24th, directly with George D. Baldwin & Company.

Q. Now, will you be kind enough to state whether you reported to McCrea that you had released the parties from whom you purchased that lard from delivering it?

A. We did not; no, sir.

Q. Will you be kind enough to state whether you received any consideration from these different parties for relieving them from the performance of their contracts.

A. We did not. You mean whether they paid us something?

Q. Yes, sir.

A. No, sir.

Q. None of them paid you anything?

A. No, sir.

Q. You received no money out of that transaction upon releasing them?

A. No, sir.

Q. Did you receive anything for the privilege of releasing them?

A. Would you call offsetting a contract releasing us? In releasing that contract we really paid out as much as that contract was worth.

Q. As I understand you, then, you didn't receive any consideration from these different people that ought to be credited to McCrea for releasing them from the performance of the contract?

A. No, sir.

Q. But you did relieve all of them from the performance of the contract of delivery in August in the manner you have stated here?

A. Yes, sir.

146 Q. You have said something to me in your testimony about offsetting one contract against another; that looks to me very much as if you was making use of the contract that you held for McCrea's benefit for your own benefit; is that true?

A. No, sir; except to facilitate our business, not in dollars and cents.

Q. That is the use, I believe, that any one puts other people's property to, to facilitate their own business.

A. I mean that we didn't get any money for it or anything of that kind; we didn't make anything on the market.

Q. As I understand, it comes to about this: Say some day in May—I will suppose the 24th or 25th of May—you was bound to deliver to somebody a certain amount of lard or pork, and instead of delivering it you would make use of the contract which you held upon account of Mr. McCrea to discharge that obligation, wouldn't you? Is that called offsetting?

A. We would offset the two contracts; one to have McCrea's and one some other man's; yes, sir.

Q. Wouldn't that be using it for your own benefit?

A. Merely to facilitate business—to facilitate the handling of a great many contracts; both parties very often get out of contracts; McCrea sold out some stuff before it was due to be delivered sometimes.

Q. So that notwithstanding you held the lard and pork on accoun of McCrea, you didn't hesitate to make use of that contract in order to get out of some other one, did you?

A. Not where we could have it coming from some other party.

Q. You just go on and make use of it as if you owned it, do you?

A. Yes, sir.

Q. And that is the way you do it?

A. Yes; that is the way we offset this contract; but we always keep its coming from some one else. All this was done under a rule of the board of trade.

Q. Are you familiar with the facts which you have set up in
147 your complaint or petition here against Mr. McCrea?

A. Yes, sir.

Q. I notice that you charge in your petition that on the 19th of May, 1883, McCrea requested and directed your firm to make a contract in his behalf and for his account for the purchase of 1,000 barrels of mess pork at $19.50 per barrel, and 1,000 tierces of prime steam lard, at $11.75 per 100 pounds, the same to be delivered by the vendor at any time in the month of August, 1883, that the vendor might choose, at which time payment was to be made; and you allege that, in accordance with the request and direction, as brokers and agents for said defendant, you did purchase the order or contract, make a contract of purchase for said defendant and upon his account, and you further charge that, in pursuance of that contract, on the 1st day of August, in execution of the contract and in accordance with the conditions and terms thereof, the amount of pork and lard mentioned therein, to wit, 1,000 barrels of mess pork and 1,000 tierces of prime lard, was tendered to the plaintiffs—tendered to you—and the amount of money agreed to be paid therefor by said plaintiffs, in behalf of said defendant, was demanded by the vendor to be paid by the said plaintiffs, and that, in accordance with the instructions of said defendant and the terms and conditions of their agency for him, the said plaintiffs, at the instance and request of said defendant, received said pork and lard, and advanced for said defendant, in payment therefor, the sum of $58,553.34, and also the sum of $56, the cost of inspection of the sale, all of which they were bound and compelled to do by the terms of said contract, as aforesaid. Now I wish to ask you how you reconcile that statement with
the statement that you have just made—that you released
148 the man from whom you purchased the pork from delivering
it within a few days after you made the contract, and that you released the man from whom you purchased the lard from delivering it within a few days after you purchased the lard—how do you reconcile that with the statement in your petition here, that, in pursuance of that contract, made on his account, this pork and lard was delivered to you?

A. Exactly on the grounds that the elevator man does. He has so much stuff coming, so much in his elevator, so many contracts to fulfill outside, so many receipts outstanding. He always keeps that quantity of stuff in his elevator. We always keep that quantity of stuff coming for James McCrea. There is no special 250 lot in reserve for any one customer. We had the stuff coming in. We ag-

gregate our books and balance every few days to see whether we have enough stuff coming to fulfill these contracts. We stand in exactly the same position as an elevator man. He gives a receipt for 25,000 bushels of wheat, No. 2 wheat. The first man that puts his wheat into the elevator may be the last man to draw out; so the first man will get the wheat deposited by the last man. We always keep that stuff coming, by contract, on our future contract book, and we watch every day from where it is coming. Now our future contract book, the only record that is made on that for the purchase of anybody is an initial—sometimes a number, even—an initial; then we keep our customers' ledger, for whom we have these outstanding contracts. If these two books don't balance we have to check the trades and find error. Say we have 10,000 barrels of stuff the 1st of August for customers. We see that we have that *we have that* 10,000 coming of B. T. parties, for instance, like that of McCrea. It is charged to pork account and credited to pork account, and then, at the end of the day, the
149 *the* stuff is applied to this account and it is bound to balance.

For instance, if we buy on the 1st day of May one barrel of pork—say we buy it of Jones at $19 per barrel, ac. of A, to be delivered in August, B may be a packer; he says on the 15th day of May sell me one barrel of pork for August delivery; we go into the crowd and sell it; he may be cutting the hogs to-day, or may not have bought the hogs. We sell as requested on account of B. If we happened to sell to the very same man whom we purchased the stuff of for A—that is, Jones—it would be foolish to let it stand open until the 1st of August and for Jones to deliver to us and we deliver back to Jones. We sell that to Jones at $18; we have one bbl. coming at $19 of Jones and one bbl. going at $18 per barrel to Jones; we would pay Jones $1 per barrel, the difference, and charge it to pork account. Say, June 1st B sees that instead of making that pork he can buy it better on the market; he gives an order to buy it in, and we buy it at $17 a barrel of Johnson, and render B an account, crediting him $1 per barrel, and charge to pork account; therefore pork is charged $2 per barrel. Johnson delivers us that pork the 1st day of August; we receive it and pay for it and charge it to pork account; charge, $17. We originally bought the pork for A. That leaves pork account a debit of $19. We bill the pork to A at $19 a barrel, and credit pork account $19.00, which exactly balances our pork account and leaves A that one barrel of mess pork. Do we make a dollar out of it? Not a cent more than our commission.

Q. You didn't understand me to ask whether you made or lost by these different transactions. I am trying to see the part that my client has in your affairs rather than what other people have.

150 A. You presumed that in your manner.

Q. As I understand you, when you traded for his pork contract you got something out of it; pork was advancing a little; you got a little profit out of that?

A. The contract that offset that may have been made a month before or the same day of offset.

Q. Can't you tell me whether pork was advancing at that time or declining?

A. That I don't remember.

Q. There was something, however, some benefit, derived by your firm from that contract. I am not mistaken about that, I think. Your firm derived a benefit of about $81.25 on that first contract?

A. No, sir; we didn't derive that benefit. You asked in regard to Eldridge paying us. We collected on account of Eldridge from some other parties.

Q. Will you be kind enough to tell us whether when you made the offset that you have spoken of in regard to the pork contract you made or lost money by it?

A. We didn't make or lose.

Q. You didn't do either?

A. We didn't make or lose.

Q. Had pork advanced at that time or fallen on the market?

A. I can't remember; that is a long time ago. We didn't make or lose a cent.

Q. At the time you traded off the lard contracts and offset them, used them to facilitate your own business, had lard advanced or fallen on the market at that time?

A. The market had declined.

Q. Had declined?

A. Had declined.

Q. So that there would have been a loss at that time on the lard if it had been closed up?

A. Yes, sir.

Q. Do you remember how much?

A. No, sir; because we offset at different dates.

Q. About how much?

A. I couldn't tell you the market price that day; I have general idea that it was lower.

Q. About how much?

151 A. I don't know; I have an idea; I know the market was lower.

Q. What would the loss have been, large or small, at that time?

A. I couldn't tell you; I only have a general idea that it was lower.

Q. Why didn't you report to McCrea that you had been able to use his contract in a way that would relieve him from loss on the lard transaction?

A. Because it is not customary to do so on the board; it is never done. (Witness adds before signing:) Offseting the contracts did not relieve him or us from any loss.

Q. It is not customary to inform a man that you have made use of his contract or property?

A. It is not customary to notify a man that you have offset any contract.

Q. Not that you have relieved anybody from the performance of the contracts that you have made upon their account?

A. No, sir; it is not customary under that rule.

Q. That is the only reason you didn't notify McCrea?

A. Yes, sir; under the rule of the board which allows us to offset contracts as long as we don't in any way injure our customers or make them sustain losses that they would not sustain from the natural rise and fall in the market.

Q. I will ask you about Eldridge & Company, whether he made the delivery of this pork in August. Did any of the men from whom you purchased this lard, after you had released them from the performance of their contracts—did any of those men deliver any of the lard, notwithstanding, upon the 1st of August, and ask payment for it?

A. No, sir.

Q. So that, as I understand you, neither the pork nor the lard which you purchased on McCrea's account on or about the 17th of May was delivered in August; none of it?

A. Yes, sir; it was all delivered, but not by these parties.

Q. I mean by these parties?

A. Not by these parties, sir.

Q. Did anybody undertake with you—make an agreement
with you in any way that they would perform Eldridge's
152 contract; for instance, did any man, any other man, upon the
account of Eldridge, ever agree with your firm that they would
deliver McCrea so much pork?

A. They never went to Eldridge or came to us, and said deliver that Eldridge pork; no, but the stuff was delivered in the usual way.

Q. That you bought from whom you liked and whenever you pleased?

A. No, sir; on account of some other customer.

Q. Not on account of McCrea?

A. These transactions we made all the way from May 19 to August 1st, perhaps, for other customers, but the moment they got on to our future contract book they simply represented 250 pork, and we were responsible.

Q. And the pork and lard that was really delivered to you in August, as I understand you, was pork and lard that you had bought on account of other customers; it that correct; why do you hesitate?

A. I was just thinking; yes; it was bought for other customers; yes, sir.

Q. What was the next transaction that you had with Mr. McCrea? I see you refer to one in your complaint of the 22nd of May, 1883?

A. The next purchase was on May 22nd.

Q. And what was the next purchase, Mr. Gilbert?

A. 2,000 barrels of pork, deliverable in August, 1883; 1,000 at $19.82½ per barrel; 1,000 at $19.95 per barrel.

Q. And 1,000 tierces of prime steam lard?

A. 2,000 tierces of prime steam lard at $11.85 per hundred pounds for 1,000, and $11.82½ per hundred pounds for one thousand.

Q. Will you be kind enough to state now whether your firm executed that order?

A. They did.

Q. And will you please state from whom the pork was purchased to fill that order?

A. 250 barrels Cudahy & Steever; J. P. Taylor, 250 W. H. Silber-
horn, 250; and 250 more from Cudahy and Steerers at \$19.82½;
153 1,000 barrels from Blair & Blair at \$19.95; 250 tierces of lard
from Pool, Kent & Co. at \$11.85; 250 from L. M. Studwell;
500 from Geo. C. Eldridge & Co. at \$11.82½; 1,000 from Wm. Kirk-
wood & Co.

Q. Did you report to Mr. McCrea the execution of that order as to pork and lard?

A. We did by telegram and letter.

Q. Did you report to him from whom you had made the purchases?

A. No, sir.

Q. Will you be kind enough to state, now, whether upon the 1st day of August any of the gentlemen from whom you purchased that pork and lard made delivery of it to your firm?

A. We received stuff from those same identical parties, but it offset and came from that account.

Q. Do you mean to tell me that you don't know whether any of these men made delivery to your firm on the 1st of August of any lard or pork under that particular contract?

A. No, sir; they did not on the first contract.

Q. Why didn't you say that in the first place?

A. I didn't understand you.

Q. I suppose the reason that these men did not make delivery of pork and lard upon the first of August under the contracts that you made with them about the 22nd of May was because you had either offset them or in some other form released them?

A. They were offsets.

Q. You released them?

A. Offsets.

Q. In offsetting a contract you release a man, do you, from its performance?

A. Yes, sir.

WEDNESDAY, *April 8th*, 1885—2 p. m.

Direct examination of Mr. GILBERT by S. BURKE, Esq., continued:

Q. If I understand you, the amount of unsettled matters between
yourself and Mr. McCrea consists of the two items which you
154 have embraced in your petition here—the two orders; the
order upon the 19th of May and the order upon the 22nd of
May?

A. Yes, sir.

Q. And your commissions growing out of the execution of those orders?

A. Yes, sir.

Q. I notice that you charge Mr. McCrea with commissions; what do you mean by that?

A. That is the scale of commissions made by the board of trade.

We charge exchange members 2½ cents per barrel on pork for each barrel and 5 cents a tierce on lard, and for outside people that are not members of the exchange 5 cents a barrel on pork and 10 cents a tierce on lard.

Q. What is that charged for?

A. For buying the stuff.

Q. Well, do you mean for a premium or for your fees?

A. For services rendered, for buying the stuff, and——

Q. For acting as agent for them in the purchase; is that the idea?

A. For attending to the detail of the work, yes, sir; attending to buying the stuff.

Q. How long have you been a member of the board of trade?

A. Five years.

Q. How long have you been in the commission business?

A. Just 5 years.

Q. And you are in doubt as to what commission itself means?

A. I have expressed no doubt.

Q. I thought you went slow, as if you expressed some doubt.

A. I have a right to take my time; I was thinking over it.

Q. If you have had sufficient time and have it ready, now be kind enough to tell me what the charge of 5 cents a barrel and ten cents a tierce is for?

Question objected to by Mr. Wing.

A. For buying and selling the property and stepping in as principal to McCrea for the fulfillment of that contract.

Q. For buying and selling the property?

A. Yes, sir; all work connected with the transaction.

155 Q. And stepping in as principal?

A. As principal and guarantee to James McCrea that they will be filled.

Q. How much of it is for services rendered for McCrea, and how much principal?

A. Oh, $12.50 for 250 bbls. pork and $25.00 on each 250 tcs. of lard covers everything.

Q. Covers everything?

A. Yes, sir; I don't know as there are any lines drawn; we assume all risks with the parties whom we trade with on the board of trade. If they should fail in fulfilling the contract the loss would fall on us and not on James McCrea. That responsibility is included in the commission.

Q. Now, let me see if I understand it. Suppose I should meet you on the exchange or on the street, and I should say to you, Mr. Gilbert, have you 1,000 barrels of pork that you would like to sell, and you say yes, and I ask the price and you give it to me, would you charge me a commission beside that for complying with your contract?

Question objected to by Mr. Bonney.

A. Yes; we have had similar cases.

Q. So that if I undertook to buy the 1,000 barrels for $10,000 I should be obliged to pay not only the $10,000, but how much more?

A. The commission. That is, we go in on 'change and buy it; we don't carry the stuff.

Q. I am asking in case I bought of you?

A. We would not sell to you.

Q. You would not yourselves?

A. No, sir; you are not a member of the board.

Q. You wouldn't sell any pork to an outsider?

A. Oh, if we could go on 'change and buy it at $1 and sell it to you at $1.50, we might do that.

Q. You don't mean outsiders to go without pork, do you?

A. No, sir; but we don't carry it; you would be more liable
156 to go to Armour & Co. If we had an application I would go
up on 'change and see what I could buy it for.

Q. Do you mean to say that you are not a pork dealer yourself?

A. Pork manufacturer.

Q. Do you buy and sell pork?

A. Certainly, for other parties.

Q. For other parties?

A. We never carry the stuff to provide our customers with.

Q. You haven't a warehouse where you keep pork; you don't deal in pork like a man that buys it of the farmers or people that bring it to market and put it into the barrel or into the warehouse, or both, and sell out to people who want actual pork; you don't deal in that way, do you?

A. We don't do a jobbing business like that.

Q. Supposing a man goes to your establishment to-day and asks you to sell 1,000 barrels of pork; would you be ready to do it—that is, would you have the pork to sell him?

A. To sell to him?

Q. Yes, sir.

A. Not unless we first purchased on 'change.

Q. Then you didn't keep a stock on hand?

A. We kept contracts coming in; we didn't have any cash stuff.

Q. You mean pork?

A. That is called cash on 'change.

Q. No, it isn't. Have you any pork to sell?

A. No, sir.

Q. You are not dealers in pork, are you?

A. We are dealers in pork contracts, and also cash pork, where we are asked to buy for anybody else.

Q. That is, if anybody wants you to buy for them then you go on 'change and buy for them?

A. Yes, sir; if they want us to buy for them.

Q. But you don't keep a store where you sell pork?

A. No, sir.

Q. Nor a warehouse?

A. No, sir.

Q. So that your dealing in pork consists in buying and selling it for somebody else, does it?

A. Yes, sir.

157 Q. You are simply commission men; is that the idea?

A. Yes, sir; I suppose we could trade for ourselves if we saw fit.

Objected to by Mr. Wing.

Q. Well, do you trade for yourselves?

Question objected to by Mr. Wing.

A. We have done so; almost always such trades are bought for one month and sold for another.

Q. In your dealing with McCrea did you deal with him undertaking to sell to him the pork and lard yourself, or did you deal for him on commission?

A. We dealt for him on commission. The only thing that would resemble any such trade was the first order—1,000 barrels at $19.50 and 1,000 tierces of lard at $11.75; the August limits, $19.50 and $11.75. We bought the pork at $19.50 and the lard at $11.77½, and in answering his dispatch we put in a thousand tierces of lard at $11.75, and the answer came back, all right and satisfactory.

Q. Let us look at the order in the first place.

(Witness produces the first order.)

Q. (Mr. Bonney:) What is the date of it?

A. May 18, 1883.

(Mr. Burke:) The dispatch reads as follows:

"Cleveland, Ohio, *May* 18, 1883.

"Higgins & Gilbert:

"Buy one thousand pork at 50, one thousand lard at 75, August.

"(Signed) JAMES McCREA."

[Q.] This is the order upon which you made the first purchase that is involved in this case?

A. Yes, sir.

Q. You answered him, did you?

A. Yes, sir; there was considerable controversy about that order; do you want to see all of it?

Q. You may state what correspondence passed between Mr. McCrea and your firm touching that order.

158 A. By telegram, or by letter?

Q. Either, as far as possible.

A. After receiving this order we wired him as follows:

"Chicago, Ill., *May* 18, 1883.

"James McCrea, Cleveland, Ohio:

"August pork 70; lard, 80. Pork acts strong.

"HIGGINS AND GILBERT."

This was sent at 11.45 a. m.; his dispatch was received at 10.30 a. m. Then we wired him at 3.20 p. m.—that was after the board—upstairs:

"CHICAGO, *May* 18, 1883.

"James McCrea, Cleveland, Ohio:

"August pork 50. Shall we fill order? Answer.

"HIGGINS & GILBERT."

At 6.24 p. m. we received this answer from him:

"CLEVELAND, OHIO, *May* 18, 1883.

"Higgins & Gilbert:

"Order was good for the day. Pork sold 47½ to 50, August, on call. Order should have been filled; it was your mistake. If it is filled I accept order at limit. Your Mutual message ('Mutual Union he means') quoting market did not require answer. Answer.

"JAMES McCREA."

This came in late at night—6.24—after we had gone home. The next day, on the 19th, we wired him:

"CHICAGO, *May* 19, 1883.

"James McCrea, Cleveland, Ohio:

"Telegram received last night at 7 o'clock; too late to answer. Will put the pork in at 50. Is it satisfactory? Answer before opening.

"HIGGINS & GILBERT."

He answered us:

"CLEVELAND, OHIO, *May* 19, 1883.

"Higgins & Gilbert:

"Was your mistake not filling order yesterday. Will accept pork at 50, but want benefit of declines this morning, all it sells under 50. Get bottom. Fill order for lard ¾ or less.

"JAMES McCREA."

159 We wired back as follows, 9.16 a. m.:

"CHICAGO, *May* 19, 1883.

"James McCrea, Cleveland, Ohio:

"Can't stand in the gap. Consider all orders off until we hear from you.

"HIGGINS & GILBERT."

Then he answered us 10.4 a. m.:

"CLEVELAND, OHIO, *May* 19, 1883.

"Higgins & Gilbert:

"Please give Hoagland and Clark balance due me in your hands. When I give orders they must be filled. You could — filled order yesterday or this morning.

"JAMES McCREA."

We answered at 10.16 a. m.:

"Chicago, Illinois, *May* 19, 1883.

"James McCrea, Cleveland, Ohio:

"Did not consider order open for call yesterday. We offered you square thing by putting it in ourselves before opening of the board. You wouldn't accept that. Will give H. & C. (Hoagland and Clark) balance."

At 10.50 a. m. he answered again.:

"Cleveland, Ohio, *May* 19, 1883.

"Higgins & Gilbert:

"All brokers consider orders good for the day. You hav'n't used me fairly. You should — filled my order. You seem to prefer open and not limited orders which you could fill.

"JAMES McCREA."

We answered at 11 a. m.:

"Chicago, *May* 19, 1883.

"James McCrea, Cleveland, Ohio:

"Why did you not accept the pork when we offered to put it in ourselves after we had made mistake?

"H. & G."

He answered at 11.22 a. m.:

"Cleveland, Ohio, *May* 19, 1883.

"Higgins & Gilbert:

"I did accept pork this morning at 50 or less, and told you [to] buy the lard; all [of] which you could [have] done, and will accept it now; want it.

"JAMES McCREA."

160 We wired him at 11.50 a. m. as follows:

"Chicago, Illinois, *May* 19, 1883.

"James McCrea, Cleveland, Ohio:

"All right. We put in — thousand August pork 50; — thousand August lard ¾.

"HIGGINS AND GILBERT."

He answered at 2.15 p. m.:

"Cleveland, Ohio, *May* 19, 1883.

"Higgins & Gilbert:

"All right and satisfactory. Just what it should be. Thousand pork; thousand lard limits. See market lower. On much further drop will send more orders.

"JAMES McCREA."

Q. Have you the letter or telegram upon which you purchased the second lot?

A. Yes, sir.

Q. Will you please produce it?

A. (Witness producing telegram reads as follows:)

"9.50 A. M.—CLEVELAND, OHIO, *May 22nd*, 1883.

"Higgins & Gilbert:

"Buy two thousand pork; two thousand lard; 70 and 80, or less; August. Answer.

"JAMES McCREA."

Q. Read the other dispatches that you have before you in regard to that order, if any?

A. "10.30 A. M.—CLEVELAND, OHIO, *May 22nd*, 1883.

"Higgins & Gilbert:

"If [you] can't fill order at limit, fill half of order at market — [as] low as [you] can. Answer.

"JAMES McCREA."

In answer we wired him:

"11 A. M.—CHICAGO, *May 22nd*, 1883.

"James McCrea, Cleveland, Ohio:

Bought thousand August pork, \$19.82½; thousand August lard, \$11.82½. Is balance order open at 80 and 70? Answer.

"HIGGINS & GILBERT."

A. James McCrea to Higgins & Gilbert.

"11.30 A. M.—CLEVELAND, OHIO, *May 22nd*, 1883.

161 "Higgins & Gilbert:

"Fill balance order at the market low as possible.

"JAMES McCREA."

At 11.40 a. m. we wired him:

"CHICAGO, *May 22nd*, 1883.

"James McCrea, Cleveland, Ohio:

"Bought thousand August pork, 19.95; 250 August lard, 11.85.

"HIGGINS & GILBERT."

Then we wired him again, before he replied, as follows:

"11.56 A. M.—CHICAGO, *May 22nd*, 1883.

"James McCrea, Cleveland, Ohio:

"Bought 750 August lard, \$11.85. Please deposit \$3,000 margin in our bank.

"HIGGINS & GILBERT."

2.25 p. m., James McCrea to us:

"CLEVELAND, OHIO, *May 22nd*, 1883.

"Higgins & Gilbert:

"See no market over 82½, lard. Only one market, 95 pork. Do you not pay over market? Answer my dispatch.

"JAMES McCREA."

We didn't answer by wire; we answered by letter; a letter would go through as quick as a dispatch; it was in the afternoon.

Q. Have you any further telegrams in relation to and prior to either of the purchases in question?

A. No, sir; except depositing money.

Q. Mr. Gilbert, you may state whether, upon the 1st of August there was any pork delivered to your firm upon account of Mr. McCrea, which you received upon his account and paid for.

A. There was 3,000 barrels of pork.

Q. Now, will you be kind enough to state who delivered to you 3,000 barrels of pork upon the account of McCrea?

A. John Gaynor, 250 barrels; Henry Botsford & Co., 500 barrels; G. W. Higgins & Co., 1,500 barrels; D. U. Denton & Co., 250 barrels; V. W. McFarland & Co., 250 barrels; Pool, Kent & Co., 250 barrels.

Q. What time did your firm purchase the pork delivered by Higgins & Co.?

162 A The contracts were dated June 27, June 29, July 17, June 20, June 20, June 27.

Q. That is the time that your firm purchased from Higgins?

A. The time that we purchased it from Higgins—I think the time we took the contracts was August the 1st. We were short on property for them on those dates.

Q. Explain what you mean by that.

A. We had property sold on our books——

Q. No. What do you mean by "the time we took the contracts was August 1st"—the time you received them from Higgins & Co.?

A. We were short on our books 1,500 barrels of pork for Geo. W. Higgins & Company. They delivered us this 1,500 barrels of pork to fill those contracts August 1st.

Q. Now, go on and explain what you mean by being short of pork for Higgins & Company.

A. We had that stuff sold on our books for their account—1,500 barrels.

Q. And they delivered it to you?

A. They delivered it to us, and we were to fulfill all the contracts we had sold on our books for them.

Q. So that the pork which was delivered to you by Higgins & Company on the 1st of August was pork which Higgins & Company were indebted to you—had promised to deliver to you?

A. Yes, sir.

Q. Which you had sold to somebody on their account before that time?

A. Yes, sir.

Q. Do you remember to whom you had sold it before that time?

A. No, sir; I do not.

Q. Some of your other customers?

A. Some parties on the board; not our customers, but houses on the board.

Q. That you had sold upon the account of Higgins & Co.?

A. Yes, sir.

Q. Will you be kind enough, now, to state what you paid to Higgins & Company for that pork which you purchased on the 1st of August?

163 A. I will have to trace out each lot; it is in 250 lots. I have the checks here—$23,579.

Q. Now, state whether that was the price of pork actually passing upon the 1st day of August?

A. The market price?

Q. Yes, sir.

A. No, sir.

Q. Was it more or less than that?

A. Less, considerably.

Q. How much less?

A. 13.50 or 13.25; somewhere like that. That was the market price. We paid different prices; about $3 a barrel less on 1250 of it, and about 50 cents a barrel on 150.

Q. As I understand, you paid Higgins & Company the price which you had agreed with some other customer before that time to pay you for the pork; is that the idea?

A. Not a customer; we had sold on our books for Higgins & Company at these prices; they were sold contracts, and that was the price. Of course, they delivered to us to fulfill those contracts, and we paid for them at the price we had already sold on our books.

Q. Who did you actually deliver the pork to that you got of Higgins & Company?

A. Who was it sold to?

Q. Who did you deliver it to?

A. We reserved it for McCrea.

Q. Have you got it yet?

A. No, sir; we closed him out then.

Q. Who did you sell it to?

A. When we closed McCrea out?

Q. Yes, sir.

A. 2,000 barrels to George D. Baldwin & Company.

Q. On the 1st of August?

A. Yes, sir, and 1,000 to Henry Warner & Company.

Q. I understood you to say a while ago that Higgins & Company delivered this pork to you upon the 1st of August in fulfillment of contracts which you had made upon their account before that time. Is that correct?

A. Yes, sir: that is, on contracts that we had sold on our books for them.

Q. So, as I understand you, the pork that was delivered to you on the 1st day of August, 1883, by Higgins & Co., 1,500 barrels of pork, was delivered to you in pursuance of contracts which you had made upon their account with other members of the board before the 1st of August. Is that correct?

164 A. Yes, sir. Well, we had 1,500 barrels of pork of G. W. Higgins & Company; we, the first of the month, often delivered their stuff—that is, they delivered to us and we delivered to the parties to whom they had it sold. We often took their sold contracts for brokerage. We had on the 1st of the month 7,000 barrels of pork coming on our future contract book, and the first pork that came in we reserved for McCrea, because the market was a very weak, declining market, and as McCrea—as we owed McCrea—he was the oldest customer to whom we owed stuff. We had, on the 1st day of August, contracts for G. W. Higgins & Company, 1,500 barrels of pork. They delivered that pork. It is common property when it comes in, just as I explained in the elevator scheme. We didn't regard that as due to go out on Higgins' identical sales, or anything of that kind. The first pork delivered to us we reserved for McCrea out of the 7,000 barrels. It didn't matter who it came from first; whatever came there first it was reserved for McCrea.

Q. Now, as I understand you, you had sold pork upon account of Higgins & Company to the amount of 1,500 barrels, which pork Higgins & Company delivered upon the 1st day of August. Inasmuch as that pork was delivered upon the 1st day of August by Higgins & Company in fulfillment of the contracts that you had made upon their account, will you be kind enough to state whether you did not deliver it to the man to whom you sold it on their account?

A. Yes, sir; my order to one man in the office that takes charge of that department was to reserve the first 3,000 barrels of pork and tierces of lard that came to us. The market was a weak, declining market. I wanted this thing to be cleaned up with McCrea as soon as possible—the first 3,000 bbls. pork and 3,000 tcs. lard that came in. The man notified me that he had got 3,000 bbls. pork and 3,000 tcs. lard. I then wired McCrea, and we gave him until 12.15, Chicago time, to answer us
165 what to do with it. Now, our object was to get this stuff in
as soon as possible—this 3,000 pork and 3,000 lard. If the stuff had come in the afternoon instead of in the morning, as it might have done (these board of trade men might have had other work to do and not have delivered it until afternoon), we would have had to take it in and pay for it, and carry it over night and incur expense of interest, insurance, and storage, which, on the whole amount, if they hadn't delivered it until afternoon, would have cost McCrea, with the decline in the market, $2,758.80 more; so our object was to get that stuff in as soon as possible, and when the first lot of stuff came in our clerk told us that he had 3,000 pork and 3,000 lard; that it had been delivered.

Q. Now, inasmuch as you sold upon account of Higgins & Co. just as many barrels of pork as they delivered to you upon the 1st of August, will you be kind enough to tell why you didn't deliver the pork?

A. I don't believe I understand the question.

Q. Inasmuch as you had sold 1,500 barrels of pork for Higgins & Company, to be delivered upon the 1st of August, and Higgins & Company delivered to you the pork on the 1st of August to perform their contracts, why didn't you apply that pork in that way?

A. Because we had the contracts. They delivered the stuff to us and that settled it; we could either deliver on these identical contracts—perhaps the identical contracts were not open—or we could deliver to any customer.

Q. Do you mean to swear that the identical contracts were not open at that time, sir?

A. I don't know whether they were or not; they may have been—that is, the identical 250 going to somebody.

166 Q. I am talking about this pork you had sold on account of Higgins & Company. Do you swear that these contracts were not outstanding at that time?

A. Certainly, they were.

Q. That was August delivery pork, wasn't it, you made for them?

A. Yes, sir.

Q. Now, then, sir, why did you direct the pork which you were to deliver upon their account and turn it over to another account?

A. Because it was not to be delivered especially on their account. They performed their contract—that is, Higgins & Company did—and we had these contracts to perform. We had in the morning 7,000 barrels coming. Now, that stuff was coming in to us in the morning by 11 o'clock—that 1,500 barrels, and 1,500 barrels from other names that I have given you. The reason we didn't deliver that out, we reserved that 1,500 for McCrea, and the other pork that came in in the afternoon went right out on these contracts for Higgins.

Q. If Higgins & Company had performed their contract with you before that time, as you now say, how did they happen to deliver you any pork at all?

A. They couldn't deliver August stuff until it was due.

Q. Now, I want to have you state, Mr. Gilbert, whether upon the day that Higgins & Company delivered you 1,500 barrels of pork you had 1,500 barrels of pork sold upon their account that was due that day?

A. Yes, sir.

Q. They delivered you the 1,500 barrels of pork because you had made such sales, did they not?

A. They did.

Q. And in fulfillment of their contract?

A. Yes, sir.

Q. Now, what I ask you is, why didn't you make use of the pork in that way and save any loss on it?

A. We reserved that 1,500 for McCrea; it happened to be the first that came in, and we saved him from paying interest, insurance, and storage over night on the stuff; what was the odds 167 whether it was that stuff or what was in in the afternoon? There was exactly 1,500 barrels coming from D. Eggleston & Son. We went to their office and asked——

Q. You are putting in a good deal that is unnecessary, Mr. Gilbert.

A. I only want to show you how it was. Eggleston & Son was to send us the pork in the morning; it didn't come in the morning, but in the afternoon. They delivered us that pork upstairs and we couldn't deliver it out. If he had ordered it sent down to Cleveland, we would have done it, but if we had wired him that the stuff was delivered in the afternoon we couldn't have sold him out that afternoon; it was in the summer; there was no session in the afternoon, and we couldn't make any sales anyway; we would have had to receive it any carry it over night It would have cost $635, about, to carry it over. Eggleston delivered in the afternoon, and that was delivered out on the other sale; we delivered the other 1,500 out on the Higgins sale.

Q. You are informing us about Eggleston; he hadn't sold any pork to McCrea, had he?

A. No; he had sold to us; it was coming to us.

Q. Don't you know the difference between Higgins & Gilbert and McCrea?

A. McCrea isn't known at all—that is, to these parties.

Q. There is a difference between Higgins & Gilbert and McCrea, isn't there?

A. There is a difference; yes, sir.

Q. That is, they are not the same person, are they?

A. No, sir.

Q. Then, as I understand you, Eggleston had sold Higgins & Gilbert some pork?

A. Yes, sir.

Q. He hadn't sold McCrea any that you know of?

A. No, sir; no more than Eldridge; no one sells him any.

Q. I want to know whether he sold any or not.

A. You put a double meaning on it. We saved McCrea over $600.

Q. Let me know about another thing. So far as Higgins & Co. are concerned, Higgins & Co. hadn't sold any pork to McCrea, had they?

A. No, sir; that was coming to Higgins and Gilbert.

168 Q. Was the firm of Higgins & Company the same men as Higgins & Gilbert?

A. No, sir.

Q. Any relation?

A. His father.

Q. Geo. W. Higgins is the father of Mr. Higgins, of your firm?

A. Yes, sir.

Q. George W. Higgins & Company hadn't sold any pork at that time to McCrea through your house, had they?

A. No, sir; neither had any of those delivered to us. It was coming from those parties; they didn't know McCrea in the transaction at all.

Q. The transaction that you had with them had nothing to do with McCrea, had it, of itself?

A. Certainly; that is where we looked to for the pork; we had 7,000 barrels of pork coming.

Q. You get in "7,000 barrels of pork" pretty often; do you mean you had sold 7,000 barrels of pork to McCrea?

A. No, sir; we had that much coming—that is, we had 4,000 coming and 4,000 more coming, but no special lot to any one.

Q. You have already informed us, in the earlier part of your examination, that you bought on McCrea's account a certain amount of pork?

A. Yes, sir.

Q. And you have told us from whom you bought it; that was correct, was it not?

A. Yes, sir.

Q. And you sold out these contracts—sold them as before stated?

A. We didn't sell out these contracts until August 1st; we offset them with contracts we had sold.

Q. When you offset a contract, as you say, is the contract in life any longer?

A. In offsetting it we always have it coming from some other party.

Q. What do you mean by offsetting a contract?

A. I explained it to you this morning.

Q. Do I understand that the effect of offsetting is to cancel the transaction?

A. It settles the bought contract and the sold, yes, sir; but
169 there is another purchase against that sold contract that it
opens; that contract stands open, and that is the contract
that we then look to.

Q. As I understood you this morning, when you received the orders from McCrea you executed them in good faith by buying the amount ordered of sundry persons that you have mentioned; that was correct, wasn't it?

A. Yes, sir.

Q. Both as to lard and as to pork?

A. Yes, sir.

Q. That in regard to the pork which you purchased on the 19th, you made use of that pork to facilitate your own business between, say, the 22nd and the 25th, inclusive; wasn't that correct?

A. Yes, sir; by offsetting against the sold contract we have another contract coming to us; we can't offset that unless we have it coming from some other source.

Q. I want to know how you got rid of the contract on account of McCrea, as I understand you took that into your business.

A. Yes, sir; by offsetting against the sold contract and having it come from somebody else, at a lower price perhaps, it facilitates our business, of course; we don't have to keep putting up money on it.

Q. Now, you facilitate your business by the use of the lard contracts in the same way, don't you?

A. Yes, sir; according to rule 26, section 6, of the board.

Q. And you have a rule here in Chicago, as I understand you—rule No. 26—that allows you to make use of other people's property for your own benefit—that is the idea, isn't it—to facilitate your own business?

A. We consider we have a right to do that, provided, in case of substitution, we are held to guarantee the ultimate fulfillment of the contract, and shall be held liable for damages resulting from such substitution. If we have lost any money by such substitution we are ready to stand for it.

170 Q. As I understand you now, Mr. Gilbert, there was no connection between the delivery of pork by Higgins & Company, no connection between their contract or contracts made upon their account and the contracts made upon account of McCrea except in your mode of dealing; that you saw fit yourselves, as I understand you, to make use of that pork upon the contract you had made upon account of McCrea; is that it?

A. Yes, that is the idea; that substitution didn't affect McCrea any; such a substitution wouldn't affect him any unless it makes him loose money, otherwise than what is the actual decline or rise in the market.

Q. As I understand you, after you received McCrea's orders you made certain contracts upon his account and bought for him certain lard and pork for delivery in August; so far as the persons with whom you made those contracts were concerned, you in the same way relieved them in offsetting, or something of that kind, so that they were not bound to make deliveries to you on the 1st of August; that is correct, is it not?

A. Yes, and we had it coming from some other board of trade house; we didn't offset and not have anything coming.

Q. Now, after those contracts which you had made upon account of McCrea were either abrogated or offset, or in some way compensated so that they were out of the way, you had no existing contracts then on account of McCrea, did you, after that?

A. Certainly; upon other contracts on the bought side of our books.

Q. Who did it open with; who was the next man to purchase McCrea's pork after that?

A. Every day or so our clerk takes off what is called a balance
sheet and sees that we have all the stuff coming. We had on
171 our books 3,000 barrels of pork for McCrea. He takes our
future contract book and looks to see if we have 3,000 barrels
of pork more coming than going. If we have, that book balances. That 3,000 barrels may be coming from one man to-day and another to-morrow. If any differences are paid out in offsetting, they are charged to pork account, or, if collected, credited to pork account.

Q. By the 25th of May you had closed out, as I understand you, all the pork which you had purchased upon the account of Mr. McCrea under an order of the 19th?

A. Yes; those original accounts offset, and others were open.

Q. They are all ended in the same way, terminated in the same way?

A. Yes, sir.

Q. Will you tell me who was owing McCrea any pork then?

A. Higgins & Gilbert; that is, we were looked to for the fulfillment of this contract.

Q. Higgins and Gilbert owed him the pork, then?

A. Certainly; Higgins & Gilbert was the house he looked to.

Q. Mr. Gilbert, after you had sold out the contracts which you made upon his account, between the 22nd and the 25th of May, there was no third person, as you understand it, that was bound to deliver to him any pork?

A. They were only bound to deliver to us, these parties we were buying for. We didn't sell out these contracts on the days of those offsets; these sales were made for other customers. He couldn't have brought suit against anybody but Higgins & Gilbert.

Q. But, as I understand, when you made contracts with the different people that you told me you made contracts with upon his account, he certainly could have brought suit against them, I take it?

A. No, sir; they didn't know anybody in the contract but Higgins & Gilbert. If the market declines they call on Higgins & Gilbert.

172 (Mr. BONNEY: I object, as the witness is asked about a question of law.)

A. Mr. Eldridge knows no one but Higgins & Gilbert, and they are the parties who put up the money, and if Eldridge & Company had failed, and pork was $25 a barrel, do you suppose McCrea would have asked who his pork was bought of, or anything of that kind? No, sir; he would say that he looked to us, and would hold us responsible for it. If he told us to sell we had to sell, and if he told us to buy we had to buy; but at the same time we were principal to him in another sense, for he looked to us for the fulfillment of the contract.

Q. So, as I understand it, now, instead of your having been doing anything up here as an agent for McCrea, the real truth is that McCrea was buying of you, and you selling to him; is that the idea?

A. No, sir; we were his agents, and had to fill his orders, but at the same time he looked to us for the fulfillment of that contract.

Q. If you were selling directly to Mr. McCrea yourself, upon what ground would you charge him for commissions?

A. I didn't say, directly, we stood responsible for the fulfillment of these contracts.

Q. I wish you would tell me definitely, so that there need not be any more mistake about it, whether, in the deal between you and McCrea, you commenced dealing as agents for him; is that it?

A. We commenced by buying on order as an agent that is responsible for the fulfillment of the contract.

Q. For whom?

A. For James McCrea. We were responsible for the fulfillment of the contract.

Q. Now, then, when did you cease to be agent for McCrea, and become a principal dealer upon your own account?

A. We didn't cease; it was agent and principal from the start.

Q. And all the way through?

A Yes, sir.

Q. And that is the relation that you sustained all the way through, is it?

173 A. Yes, we followed his instructions when he gave them to us; but we were responsible for everything, put up our money and everything else.

Q. Are you quite sure in making use of the words principal and agent you have a comprehension of what that means?

A. I can tell you why I think so, because McCrea held us responsible for the fulfillment of the contract. If the market had gone up and those parties had failed he would have held us responsible, and we would have had to have fulfilled this contract. That looks like we were principals, because he looked to us; he didn't look to other parties. We were in a position that we couldn't actually sell him out without his orders, unless he got behind with his money, which we could have done if we hadn't believed him. We thought he was a straight man and would do as he said he would do.

Q. I think, Mr. Gilbert, that you stated here—I think you told us repeatedly—that you had sold his contracts out or offset them and made use of them?

A. We offset them; we didn't sell them out; we offset them against sold contracts

Q. Let us understand each other upon this point. There was a time when you made purchases of sundry people of pork and of lard for Mr McCrea's benefit and on his account, was there not?

A. Yes, sir.

Q. And in regard to the pork that you then purchased for him and upon his account of sundry people, as stated, and while you held those contracts for his benefit, you made use of those contracts, as I understand you, with other customers in facilitating your business; is that correct?

Mr. WING: Objected to as combining too much and asserting too much.

A. Yes, sir.

Q. Now, when your made use of those contracts with your 174 other customers, and in that way facilitated your own business, you put an end in some form or other, by offset or otherwise, to these identical contracts, didn't you?

A. Yes, sir.

Q. Now, after you had put an end to these identical contracts, made upon account of McCrea, did you then hold any contracts of any third person upon account of McCrea?

A. Yes, sir.

Q. Who was that person?

A. It is almost impossible to tell who the party is, almost impossible; but we knew we had it coming, because we kept the aggregate balance every night; but I can tell pretty near who it came from in this case. We had 250 coming from Wm. Kirkwood, 250 from

Councilman & Co., 250 from Sibley, French & Co., and 250 from Schunneman & Co.—that makes 1,000.

Q. You held these upon account of McCrea, did you?

A. Yes, sir; that is the way we kept the stuff coming for McCrea.

Q. Did they deliver the pork to McCrea on the 1st of August, any of them?

A. No, sir; they didn't know McCrea in the transaction.

Q. Will you be kind enough to tell me what became of these contracts that you held against Kirkwood, Councilman, Sibley, and others upon account of McCrea?

A. They were offset in the same manner as the original purchases.

Q. With whom?

A. 250, Chapin & Edwards, the Kirkwood lot; the Councilman lot offset George Stewart & Co.; the Sibley, French & Co. lot offset direct by some sold to them direct; the Schunneman lot direct.

Q. Offset?

A. Offset by sale to them; yes, sir.

Q. What time were these offsets made?

A. June the 9th, the Kirkwood, Chapin & Edwards, and July 6th, the Councilman and George Stewart; May 25th, Sibley, French & Company, direct; June 6th, Schunneman, direct.

Q. Now, be kind enough to tell me whether you entered these
contracts upon your books as substituted in favor of
175 McCrea?

A. No, sir.

Q. What was there about that to show that McCrea had any interest in it?

A. By our taking off our balance-sheet at night and finding that his were in the amount that was coming.

Q. Coming to whom?

A. To Higgins & Gilbert.

Q. But not coming to McCrea?

A. We were looking to those parties to deliver that stuff to fulfill the contract with McCrea.

Q. You put nothing on your books about it, did you, sir?

A. No, sir.

Q. Did you in any way upon your books substitute any of those contracts that you have mentioned for the other contracts that you held in behalf of McCrea?

A. Only in a general way. We knew the amount that was coming to us; we looked to see who we had 3,000 barrels of pork coming from, and there were the 3,000 barrels; so we knew that must be the lot.

Q. My question is: Did you make any entry upon your books showing that these contracts which you have last mentioned took the place of the contract which you had cancelled and belonging to McCrea?

A. No, sir; not any.

Q. Did you report to McCrea that you held these different people last mentioned upon his account?

A. No, sir.

Q. Well, finally, you cancelled every one of these contracts of these last-mentioned people, irrespective of McCrea, didn't you?

A. We did; where that was coming from some one else.

Q. In point of fact, you never used McCrea's name in regard to any of these last-mentioned contracts, did you, on your books or elsewhere?

A. I don't know as I exactly understand that question.

Q. (Last question read to witness.)

A. Well, he looked to us for everything. We had 3,000 barrels of pork at that time for McCrea, and we looked to see if we had it coming all straight, and it was coming. Every night the books balanced, and these particular lots every night were the lots 176 we were looking to for the fulfillment of the contract, although we didn't mark it with any particular mark.

Q. When did you offset and terminate all the contracts here last mentioned—four of them of 250 barrels each—when did you cancel and terminate those contracts?

A. I gave them to you, sir.

Q. You used these contracts also, as I understand you, in facilitating your own business?

A. We did.

Q. Now, as I understand you, about the Kirkwood bill, you purchased some pork from Kirkwood deliverable on the 1st of August let me ask you whether you didn't sell some pork to offset or balance that contract of Kirkwood?

A. Yes; and that probably was the sale we offset against Eldridge or some other contracts we were under.

Q. Now, in regard to Councilman, I understand you had 250 barrels coming from Councilman; wasn't that pork which you had sold on account of somebody else?

A. I couldn't tell you now; I don't know; it may have been sold or bought; I don't know.

Q. You can tell me this, can't you, whether you bought that pork of Councilman for the express purpose of delivering to McCrea?

A. It was bought in the natural course of business, probably, for some other man's account, but the sale offset McCrea's probably, too; so, you see, it is as broad as it is long.

Q. Now, after you had cancelled this second lot of contracts that you had, and which you think you held on account of McCrea, although his name did not appear in the transaction, what contracts did you then hold that took the place of those; and be kind enough to state, first, however, whether you held any then in McCrea's name, or that you put on your books in his name?

A. We never entered any contracts in any way to show that they were McCrea's, except original purchases. The only way we 177 knew was by keeping our books balanced.; the same as the elevator man; he has 25,000 bushels of wheat in his bin; he don't mark each lot of wheat.

Q. As I understand you, you put yourselves in the place of principals—that is to say, you undertook to comply with the contract, and let Mr. McCrea have his pork on the 1st of August; is that the idea?

A. We were in a position that we would have to comply. He looked to us for the fulfillment of the contract. At the same time we followed his orders.

Q. A good while before the 1st of August he said something to you, didn't he, about the delivery, or wrote you something about it?

A. Yes, sir; he did.

Q. Do you remember how early he wrote to you about it?

A. We got several letters from him about the stuff for him. (Witness refers to memorandum.) On May 19th he wrote to as on May 21st, May 22nd—two letters on May 22nd—May 23rd, May 30, June 12, June 13, June 16, July 7, July 16, and July 24.

Q. You have those letters, have you, Mr. Gilbert?

A. We have.

Q. Will you please turn to the account between yourself and Mr. McCrea?

A. Yes, sir.

Q. Have you got it before you?

A. Yes, sir.

Q. Will you let me look at it?

Mr. Bonney: What is the name of this book, Mr. Gilbert?

A. Book B, customers' ledger, page- 196, 197, 256.

Q. Mr. Burke: Where does the account commence, Mr. Gilbert, touching the transaction in contention here?

A. Page 256, book B, customers' ledger, and all the entries in relation to it are on that page.

Q. Are the entries upon this page all the entries you have in any book upon the subject of this deal?

A. No, sir; we have the books showing the parties from whom we bought this stuff.

Q. Will you turn to the account in regard to the first purchase, then?

178 A. The pork book, future contracts, double page 64.

Q. What entry has relation to this matter?

A. The 19th; there it is. (Indicating.)

Q. I don't observe McCrea's name there?

A. J. McC.; that is all. Here (indicating), J. C. McC.; that was a mistake.

Q. That is meant for J. C. McCrea, is it?

A. Yes, sir.

Q. Now, will you turn to the entry of the next one?

A. 1,000 barrels, $19.82½, page 65. Bought of Cudahy & Steevers—250, J. P. Taylor; W. H. Silberhorn, 250. Cudahy & Steevers. Each entry is indicated by the initials "J. McC."

Q. Will your books show what lard you sold upon that day for August delivery, or pork?

A. On the 22nd?

Q. Yes, sir.

A. I don't think you have any interest in that. We sold 500 barrels. 250 to Baldwin and 250 to Eldridge—that is, for other customers. I don't see what you have got to do with that.

Q. After this date—that is, the transaction of the 22nd; now, after that date have you any entry in regard to any purchase on account of McCrea?

A. We made no note of them; no, sir.

Q. You have no account upon your books?

A. The account is always just like this. That was all blank on the sold side until August 1st. (Referring to page 256, customers' ledger.)

Q. Do I understand you that this book has been made up since August 1st?

A. No, sir; this was bought May 22nd, and entered here; customers' ledger, May 22nd, page 256. We always had these outstanding contracts to be provided for.

Q. When you cancelled these contracts, which you had entered into on account of McCrea, and offset them, as you call it, did you make any entries upon youı books about it?

A. When we offset them; yes, sir.

Q. Let me see what entry you made about that?

A. (Producing book.) This a sort of day-book of entries for payments, &c. I haven't the right day-book here. I will bring
179 it in the morning.

Q. Let me understand. What I desire to have you explain is this: Whether you made any change or any entry in your books showing upon the face of your books what contract you had substituted in behalf of McCrea in place of those which you have mentioned?

A. No, sir; the only way to tell that is you can see by the dates of the offsets and then retrace it down.

Q. But you don't assign any particular contract?

A. No, sir; we only looked to see that we had the amount coming in aggregate.

Q. But you made no substitutions, I understand, of one contract for another?

A. We didn't mark that substitution, but we knew it by looking to see if we had 3,000 barrels of pork coming.

Q. You had more than 3,000 barrels of pork coming, didn't you?

A. Yes; sometimes considerably more.

Q. You had 8,000 or 10,000, didn't you?

A. Yes; we traded for lots of other parties besides McCrea.

Q. So that in reality you had coming in on the 1st of August to you and you were under obligations to deliver on that date much more than 3,000 barrels; is that it?

A. Our obligations were so that——

Q. How many thousand barrels?

A. I couldn't tell without looking; all we had coming we owed somewhere.

Q. About how much?

A. 7,000 barrels, I think.

Q. On the 1st of August?

A. Yes, sir.

Q. Was that about the state of your account between the time that you made this last purchase in May for McCrea and the 1st of August; was that about the condition of your account during that whole period?

A. If I have stated the amount right it is.

Q. That was about the quantity that you were owing and had coming to you during that time?

A. During that time it varied from time to time, but on the
180 1st day of August that was about the amount that we had coming.

Q. You have referred to a date, or several dates, for instance, upon which you held, as you say, sundry contracts of 250 barrels apiece to answer to the first thousand barrels you had sold to McCrea or sold on account to McCrea; were those the only contracts you held that were due and deliverable in August—that particular thousand barrels referred to—or did you hold other contracts?

A. I told you that we had 7,000 barrels coming.

Q. Now, you didn't mark upon any of the contracts on your book, as I understand, a substitution or change from the contracts first made; you didn't mark a change or substitution of the one for the other upon your books in behalf of McCrea?

A. No, sir; not each particular lot.

Q. Did you mark any lot at any time?

A. Only in the way I say; the balance would be taken off at night. No, we didn't mark it.

Q. You never did mark any, did you?

A. No, sir.

Q. Or put anything upon your books to indicate that you held it for McCrea?

A. No, sir.

Q. Now, then, let me ask you another question. Supposing that these men from whom you purchased the pork and lard for McCrea delivered during the month of August; supposing that they had been anxious to release McCrea from his obligations, how could they have done it after you had given those contracts up to somebody else?

A. Those men don't know McCrea in the transaction at all; they only look to Higgins and Gilbert.

Q. Inasmuch as they only look to Higgins and Gilbert, how could you tell, having given those contracts up—inasmuch as you had given up the particular contracts you had made on account of McCrea very soon after they were made—how could you tell upon the
1st of August how much damage you had sustained by rea-
181 son of making these contracts that were given up in May?

A. If these contracts offset against the sold contracts at a lower figure we paid out the money and charged it to pork account, and then there was a contract coming on the bought side against that sold contract, and we would look to that contract as a 250 coming on McCrea's account.

Q. Suppose we leave pork out and apply it to land?

A. I never had any dealings in land.

Q. Supposing you bought some land for a man on the 1st or 19th of May, and you sold it out at a profit, or sold it out without any profit, coming out just even, on the 25th of May, although the land was not to be delivered until the 1st of August; how would you be damaged by whatever might happen after you had sold the land?

A. I don't understand anything about land transactions.

Q. You can only speak as regards pork and lard?

A. Yes, I never had anything to do with land in my life.

Further taking of testimony adjourned to Thursday, April 9, 1885, 9.30 a. m.

THURSDAY, *April* 9, 1885—9.30 a. m.

Parties met, pursuant to adjournment, Thursday, April 9, 9.30 a. m.

Direct examination of FRED. F. GILBERT continued.

Q. I want to ask you if you will turn to your accounts, or any memorandum that you may have here, in regard to the amount of money in the hands of your firm upon the 19th of May, 1883, belonging to the defendant, James McCrea?

A. We had $1,895.

Q. Belonging to him?

A. Yes; on the 19th of May.

Q. That is, if he had made no order to buy anything upon his account you would have been required to pay over to him $1,895?

A. Yes, sir.

Q. You may state, if any, how much money you have received from him since that date.

A. $18,000.

Q. Just even $18,000?

182 Mr. RIDDLE: Since the 19th of May?

A. Yes, sir.

Mr. BURCH: You may state how much money, if any, your firm has remitted to or paid over to the defendant since the 19th of May, 1883.

A. None.

Q. Will you be kind enough to state what time, at what date, Higgins and Company had sold the pork through your house, deliverable upon the 1st of August, or in August, 1883?

A. They turned over those contracts to us the 1st of August.

The last question is repeated at the request of Mr. Bonney.

A. Delivered to us, do you mean? Well, there, were different dates.

Q. Give the dates you sold that pork for Higgins & Co.

A. We had sales for Higgins on contracts of June 27, June 29, July 17, June 20, and June 27.

Q. Now you will state to whom you had made those sales for Higgins & Company, and the price of each sale?

A. June 27th, 1883, to Culber & Company, 250 barrels, $16.82½; June 29th, 1883, to Geo. Stuart & Co., 250 barrels, $16.12½; July 17th, 1883, to E. B. Stevens & Co., 250 barrels, $14.02½; June 20th, 1883, 500 barrels to Eldridge & Company, $16.65; June 27th, 1883, 250 barrels to Geo. Eldridge & Company, $16.82½.

Q. How many barrels did that make in all that you had sold for Higgins & Company?

A. 1,500 barrels in all.

Q. Now, will you be kind enough to state when you made the deliveries, or how you settled those several contracts of sale made on behalf of Higgins & Company which you have stated?

A. We delivered the stuff in the afternoon of the 1st of August; I think all of it; I can look and see; the 1st of August, in the afternoon.

Q. That and other contracts which you have mentioned?

A. Yes, sir.

Q. From whom did you receive it?

A 1,250 of it from Eggleston & Son, and 250 from Cudahy
183 & Stevens. That was included in the 7,000 barrels we had
coming the 1st of August.

Q. What other contracts did you make deliveries upon upon the 1st of August?

Question objected to by Mr. Bonney, because it relates to transactions other than those involved in this suit, and is therefore incompetent.

A. Do you want all the deliveries we made on our books?

Q. Yes, on the first of August.

A. Together with those we made on account of Mr. McCrea?

Q. Yes, give them all.

A. On the 1st of August or during the month?

Q. During the month on prior contracts, of course.

A. We delivered, on a contract made May 31, 250 barrels of mess pork, sold to King & Curtis at $19.72½ per barrel.

Q. Delivered to them, was it?

A. Yes, sir.

Q. In pork?

A. Yes, sir.

Q. Do you remember what warehouse that was in?

A. No, sir.

Q. Did you see the pork delivered?

A. No, sir.

Q. Then you don't know that the pork was delivered?

A. Only inasmuch as our books record it.

Q. That is, you know you recorded the delivery?

A. Yes; our contract was made It wouldn't be on our books unless it was made on good faith.

Q. The pork wasn't there, but the contracts were?

A. The contracts were carried out.

Q. But you didn't carry the contracts out by the delivery of so many barrels of pork, actual barrels of pork, did you?

A. We either delivered the warehouse receipt or notification of the warehouse receipt.

Q. One of the two?

A. Yes, sir.

Q. You didn't deliver pork in barrels?

A. We delivered the receipt.

Q. That is, it was a paper delivery?

A. An actual receipt calling for the stuff, to be presented
184 to the warehouse and take the stuff out.

Q. Do you know the difference between a receipt for a barrel of pork and a barrel of pork?

A. I know that the receipt calls for the barrel of pork.

Q. Do you know the difference between the two?

A. Yes; one is a barrel of pork, and the other is a receipt for a barrel of pork.

Q. Did you understand me to ask you whether you delivered a receipt for a barrel of pork?

A. Yes, sir.

Q. Let us have no misunderstanding. When I ask you whether you delivered a barrel of pork hereafter, I mean a barrel of pork, one that will weigh, say, 250 pounds.

A. That is the only way we can deliver a barrel of pork, sir, unless we take a horse and wagon.

Q. You didn't deliver any pork, then, as I understand you, upon that contract; you delivered a receipt?

A. Only by receipt or notification.

Q. You delivered a receipt or notification?

A. Yes, sir.

Q. Didn't you deliver an offset?

A. No, sir.

Q. Well, go on now and take the next instance you made delivery upon prior sales.

A. On June 9 we sold J. B. Hobbs & Company 250 barrels August pork at $9.00. That was delivered August 1st, either by warehouse receipt or notification of warehouse receipt.

Q It was not delivered in pork in the barrel?

A. No, sir; by receipt or notification, which is allowed by our rules.

Q. I am not disputing what is allowed. I am simply asking which way it was done. What other instance did you make deliveries?

A. June 27, 250 barrels mess pork to Pope & Davis, $16 per barrel.

Mr. WING: You don't mean delivered June 27?

A. Delivered Aug. 1st; sold June 27th.

Q. Mr. BURKE: Referring to your transactions upon account of Higgins & Company and with them, did you not close out or offset the contracts which you held upon their account as early as the 5th of July? Be kind enough to look at the papers and see. The 1,500 barrels you have mentioned as having sold for them,
185 did you not offset?

A. No, sir.

Q. Were those contracts all in life up to the 1st of August?

A. Yes, sir.

Q. Please turn to your memorandum and see if my suggestion is not correct, that you had cancelled a part of those contracts, and perhaps all of them, as early as the 5th day of July ?

A. No, sir ; we delivered all the 1st of August.

Q. I know you say you made delivery upon the 1st of August ; do you mean by that received on the 1st of August?

A. We received the stuff from Higgins & Company and delivered it to those parties.

Q. To whom it was going ?

A. Yes, sir.

Q. Then, as I understand you, the contract made upon account of Higgins & Company covering the 1,500 barrels of August pork were all in life up to the 1st of August ?

A. Yes, sir.

Q. And that they were performed by receiving the pork from Higgins & Company on that day and delivering it in fulfillment of the contracts to other parties. Is that correct ?

A. I cannot say yes or no and give a decided answer. The stuff that Higgins & Company delivered to fulfill those contracts was reserved for McCrea, and other lots that came in in the afternoon from D. Eggleston & Son, 1,250 bbls., and 250 bbls. from Cudahy and Steevers, was delivered out on those contracts of Higgins. The idea was to save Mr. McCrea interest, insurance, and storage over night and decline in the market, which amounted to about $630. We saved Mr. McCrea about $630 by reserving Higgins & Company's for McCrea and taking those earlier contracts in in the afternoon and delivering them out on the Higgins sales.

Q. The amount which you claim here as the balance from Mr. McCrea is how much ?

A. $31,644.31.

A. That was the difference between the value of the pork as em-
braced in the contracts and the value at the time of delivery,
186 is it, substantially, commissions added ?

A. Yes ; the difference was about that.

Q. Mr. King : That probably includes little expenses ?

A. Yes, sir.

Q. Mr. Burke : Your firm paid that difference, as you claim ?

A. Yes, sir ; every dollar of it.

Q. Inspection, &c. ?

A. No ; they got back their inspection ; we collected that back for them.

Q. Your firm went into business about five years ago?

A. Yes, sir ; March, 10, 1880.

Q. What amount of capital did you put into the business ?

Question objected to by Mr. Bonney.

A. I do not care to say.

Q. You decline to answer ?

Question objected to by Mr. Bonney as irrelevant and improper. The witness is not obliged to answer.

Q. What banks in the city of Chicago and elsewhere did you keep your accounts with in 1883?
A. The First National Bank of Chicago.
Q. Was it all kept in the First National Bank?
A. Our account here; yes, sir.
Q. And where else did you keep an account?
A. We kept accounts in a great many banks throughout the United States in different towns; I couldn't remember now what banks in 1883; it was merely to facilitate business, to call on customers for security they would deposit to our credit in a bank in the town where they were and we would draw on the banks.
Q. And would you collect the amount due from these different banks the country over yourselves, or would you collect through your bank here?
A. Through our bank here, by draft.
Q. So that your actual cash would be likely to appear in the First National Bank of Chicago, would it not?

Mr. Bonney: It is not necessary that the witness answer such questions, but he may do so if he likes.

A. Well, it would appear there in the cash balance of what
187 we were not using for business purposes.
Q. Do you remember how much cash your firm had on hand the 1st of July in the First National Bank?
A. I don't exactly remember. I don't think we had much cash on hand. We were using $150,000 or $200,000; somewhere in there. I couldn't tell you exactly.
Q. Have you any means of telling without reference to your accounts?
A. No; I could not tell by what I have here, and I don't think I would state anyway what our capital was—what we were running our business on. I think that is a very leading question.
Q. You are not afraid of being unduly influenced by leading questions, are you?
A. I don't think it's any man's business what we run our business on. I never tell any man what I have or what we use in the business.
Q. Do you remember what your business was on the 1st of August?
A. No, sir; I have no idea.
Q. I notice that you claim to have given Higgins & Company quite a large check upon that day. Did you have the money in the bank to pay it?
A. The check was protested. The bank paid the check.
Q. Do you understand my question? Did you have money in bank to make payment of that check?

Question objected to by Mr. Bonney, that the answer given is sufficient.

A. All checks were paid and stamped by the First National Bank.

Q. Did you receive any check from Higgins & Company on that day?

A. On the 1st day of August?

Q. Yes, sir.

A. I don't know. I can tell by looking at the books.

Q. I wish you would look and see.

Objected to as improper.

A. I haven't the cash-book here, but I can look it up.

Q. You can bring it in this afternoon.

A. We may have received some check that I don't know anything about.

188 Q. Have you any recollection of any check received that day from Higgins & Company?

A. No, sir.

Q. Have you any recollection of any check received from Higgins and Company the day before?

A. We received none to my recollection.

Q. Did you make a deposit upon the 1st of August of the checks of any person or firm or corporation for the purpose of meeting this check which you gave in favor of Higgins & Company?

A. No, sir; no special deposite for that special purpose. No, sir.

Q. Did you make a deposit upon that day of any check or checks that are called accommodation checks?

A. In what sense as an accommodation check? I don't believe I understand.

Q. A mere matter of loaning of the check, borrowing of the check, which is to make a transaction on paper, but in which it is not expected any money shall pass from one to another.

A. No, sir; we never did that in our lives.

Q. So far as you know or have any reason to suspect, Higgins & Company received the actual cash on the check that you gave them?

A. Yes, sir.

Q. Now, then, the question is, didn't Higgins & Company upon that day, or about that day, make a loan of a corresponding check to your firm?

A. No, sir.

Q. Nothing of the sort?

A. No, sir; nothing of the sort.

Q. Will you be kind enough to state, Mr. Gilbert, whether at any time prior to the 1st of August, either before or after any contention arose between you and McCrea about this transaction, whether you notified McCrea that you had offset or cancelled the contracts made in his behalf in May?

A. We never notified him that we had offset any contracts; it is not customary; it never is done.

Q. Be kind enough to confine your replies to my question. You didn't give him any such notice at any time?

A. Not that those contracts were offset, because it is not customary.

189 Q. You didn't do it, did you?

A. No, sir; we didn't notify him of the offsetting of the contracts, because it is not customary; no house does that, never.

Q. I am simply asking for the fact. The exact fact is you didn't tell him?

A. No, sir; we didn't.

Q. You didn't tell him at any time, did you?

A. We never told him when we offset contracts.

Q. You didn't tell him at any time up to the first of August that you had disposed of the contracts that you had made for his benefit?

A. We never notified him of any offsetting of contracts. He never asked whom we made the contracts with.

Q. Did you notify him that you had cancelled the contracts that you had made on his behalf in May?

A. We didn't cancel*l* the contracts we made on his behalf, because it was coming from some one else. The stuff was always coming. We never cancelled the contracts that we had for him.

Q. Don't make it necessary for me to go over that question again.

A. I don't want you to get a wrong impression. We offset his contract by opening another.

Q. Didn't you cancel the contract, sir, that you made under the date of the 19th of May on his account; didn't you cancel*l* that contract?

A. We offset that contract; yes, sir.

Q. When a contract is offset isn't it cancelled?

A. Not necessarily so. It is coming from some one else; the same stuff. That contract may come through a dozen parties before it is ultimately fulfilled.

Q. Here is the point I am asking you. You buy, for instance, upon account of McCrea a thousand barrels of pork on or about the 19th day of May, 1883. You bought for August delivery several contracts. You have said from whom you made the purchases. You have also said, referring to the names of those persons from whom you made the purchase on his account, you have said
190 distinctly that you offset those particular contracts within a few days thereafter, haven't you?

A. Yes, sir.

Q. Well, now then after you made the offset could you still ask those persons to deliver their pork under the contract on the 1st of August?

A. No, sir; but that contract was alive, coming from other parties.

Q. I am not talking about McCrea's contract; I am talking about the contracts with other people on his account.

A. That was McCrea's contract; we had it open on our customer's ledger, and it was coming. It must be coming from some one.

Q. I am not asking about McCrea's contract. I am asking about the contract that you made with the other men of the thousand barrels of pork upon his account, as you before explained. Now, after you relieved them from the obligations of those contracts, you didn't regard the contract, so far as those men were concerned, as in life, did you? I am not talking about McCrea, sir.

A. No, sir; we looked to other parties for it.

Q. That is, that particular contract was out of the way. You commenced dealing with Mr. McCrea at what time, Mr. Gilbert?

A. I have before stated, I think, in January, 1881. It was in January, 1881.

Q. That was with his brother, perhaps, or was it with this one?

A. We shipped 22 car-loads of stuff from January 24th, 1881, to October 5th, 1881. We were requested to ship it to A. J. McCrea, being notified by letter that the stuff was James McCrea's, by James McCrea. He said it is my stuff. I will see that the drafts are paid.

Q. Will you refer to your book and tell us whether the entry upon your book in that case is not with A. J. Crea?

A. It is, by order of James McCrea, put in his name, saying it was his stuff.

Q. Now, all the transactions that you had of that character were in the name of A. J. McCrea, were they not?

191 A. I haven't got the book here, but I am pretty sure they are in the name of A. J. McCrea, but bought by the order of James McCrea.

Q. You opened to the account here yesterday?

A. This is a later trading; this is a different account; the shipping of the car lots was kept in a different account.

Q. Your recollection is that it was all in the name of A. J. McCrea?

A. I think I could see by his letters; here are the letters from James McCrea regarding all that stuff, and he notified us to put that down to A. J. McCrea, and he would see that the drafts were paid.

Q. Did you understand that to be my question, or whether the account was kept in the name of A. J. McCrea?

A. I guess I have lost sight of the question.

Q. Be kind enough now to state in whose name that transaction was kept on your books?

A. A. J. McCrea, by order of James McCrea, saying it was his stuff; he had to trade that way at that time.

Q. You may state whether on or about the 12th of September, 1882, you commenced any transactions with James McCrea.

A. I don't know exactly how to answer that; that was the time we received the order from A. J. McCrea, which was afterwards transferred to James McCrea?

Q. How soon was the transfer made to James McCrea?

A. On October 20, 1882, we received orders from A. J. McCrea to transfer the above trade to James McCrea, being accepted by him in his letter of the 7th, when — ordered the transfer of the order first, and A. J. McCrea ordered the transfer afterwards.

Q. You may state what purchase you made on his account or upon the account of A. J. McCrea, which was afterwards transferred to James McCrea in September, 1882.

A. September 12, 1882, we bought 250 barrels of pork, January delivery, $18.27½; September 12, 1882, 750 barrels of pork for January delivery at $18.30.

192 Mr. SANDERS: You are not giving the names of the parties of whom you bought?

A. You didn't ask me who we bought it from—250 barrels of Stiles & Gody and McMahon, at $18.27½; 250 barrels from R. W. Rowlston, at $18.30; 500 barrels from the Alliston Packing Company.

Q. Making in all how much?

A. 1,000 barrels.

Y. And for delivery when?

A. In January, 1883.

Q. Was that the entire transaction in September?

A. No, sir; that was only on the 12th.

Q. Well, go on.

A. On the 13th of September we bought 1,000 barrels of pork for January delivery, as follows: 250 barrels, at $18.62½, of I. N. Lowry & Co.; 250 barrels, at $18.60, of Murry, Nelson & Co.; 250 barrels, at $18.60, of John Gaynor; 250 barrels, at $18.57½, of E. B. Stevens & Co. We also bought lard the same day.

Q. Tell us about the lard.

A. September 13, 1882, we bought 1,000 tierces of lard, as follows: 250 tierces, at $11.27½, of W. B. Williams; 750 tierces, at $11.25, of Cudahy & Stevers. September 18, 1882, 1,000 barrels of pork, as follows: 250 barrels, at $18.90, of W. T. Baker & Co.; 500 barrels, at $18.90, of Wm. Young & Co.; 250 barrels, at $18.90, of McDermid, Russ & Co. September 18, we bought 2,000 tierces of lard, as follows: 250 tierces, at $11.50, of R. H. Leball; 250 tierces, at $11.50, of Boyd, Lunham & Co.; 250 tierces, at $11.50, of Henry Botsford & Co.; 250 tierces, at $11.50, of Boyd, Lunham & Co.; 1,000 tierces, at $11.45, of R. W. Rowlston. September 25th, 1882, 1,000 barrels of pork, as follows: 750 barrels, at $18.97½, of the Chicago Packing and Provision Co.; 250 barrels, at $18.97½, of George Stewart & Co. We also bought 1,000 tierces of lard September 25th, 1882, as follows: 500 tierces, at $11.57½, of E. B. Hutchinson & Co.; 500
193 tierces, at $11.60, of E. B. Hutchinson & Co.

Q. Now, will you be kind enough to state whether all the contracts you have mentioned as made in September, 1882, upon account of McCrea remained in life up to the time of delivery?

A. No, sir.

Q. Were they all offset before the time of delivery?

A. Not all.

Q. Can you tell which of them remained in life up to the 1st of January?

A. Yes, sir.

Q. Will you go on and tell us, please?

A. 250 tierces of lard was delivered to us by Cudahy & Stevers at $11.25 on a contract made September 13.

Q. Go on, please.

A. That is all.

Q. And the others?

A. The others were offset in the regular way.

Q. The others were offset by your firm?

A. The others were offset in the regular way with other firms. We cannot make an offset with a man unless we have some other contract.

Q. They were not offset with McCrea, were they?

A. No, sir.

Q. Nor was he notified of their being offset?

A. No, sir.

Q. Now, will you be kind enough to state what, if any, pork or lard was delivered to McCrea upon account of any of the September contracts, 1882?

A. They were contracts made in September.

Q. That is what I ask you, whether there was any delivery; and, if so, what delivery was made in January upon any of those September contracts of 1882?

A. No, sir; none. Our order was to sell it out in December.

Q. You were ordered to sell it out in December?

A. Yes, sir.

Q. How was the transaction settled as between your firm and McCrea?

A. The property was sold out in December, the latter part of December, and an account [of] purchase and sales was rendered to Mr. McCrea.

Q. Will you be kind enough, now, to state to whom the sales were made in December?

A. I didn't finish my answer to your previous question.
194 An account [of] purchase and sales were rendered to McCrea,
and as there was a decline in the market he was charged with
the loss between the price he bought at and the price he ordered us
to sell at.

Q. Do you remember what he was charged?

A. I can look and see.

Q. You don't remember without looking?

A. No, sir.

Q. Will you be kind enough to state to whom you made the sales upon his account at that time?

A. I have given you all those right here in print. (Referring to answers to interrogatories.)

Q. I want to have the account appear here.

A. On December 28, by McCrea's order by telegram we sold 3,000 barrels of pork, as follows: 250 barrels, at $17.02½, to the Chicago Packing and Provision Company; 250 barrels, $17.02½, to Jackson Brothers; 500, at $17.02½, of McGeoch, Everingham & Company; 250 barrels, at $17.00, to Sherman, French & Company; 250 barrels, at $17.00, to Chas. Councilman & Company; 250 barrels, at $17.00, to John Gaynor; 500 barrels, at $16.95, to the Chicago Packing and Provision Company; 250 barrels, at $16.95, to J. P. Taylor; 500 barrels, at $16.95, to Henry Memory. And on December 29th we received an order in the same way to sell 1,000 barrels of pork, which we sold as follows: 500 barrels, at $17.07½, to R. W. Rawlston; 500 barrels to Chas. Councilman, at $17.07½.

Q. What is that—March pork?

A. January pork. December 28 we received an order from McCrea in the same way to sell 4,000 tierces of lard, which we did, as follows: 3,000 tierces, at $10.30, to Fowler Brothers; 1,000 tierces, $10.30, to the Chicago Packing and Provision Company. The sales are all stated in our answers to interrogatories that have been made.

Q. What became of those contracts? Did you offset those generally with your customers?

195 A. We offset those generally with trades we had with other people on the exchange. We didn't offset with the customers, the parties whom we buy of on the board.

Q. And what ultimately became of the contracts, so far as McCrea was concerned? Was the property delivered to him or settled in some other way?

A. It was settled by his sale before the 1st of January—that is, settled by those sales on December 28th and 29th. He lost all interest in those trades, whether they were delivered or not, because we rendered an account, purchase and sale, and debited whatever the decline was from his purchase price to his selling price.

Q. As far as he was concerned he was closed out?

A. Yes, sir.

Q. And a set of contracts made that were to be performed in March?

A. Yes, sir.

Q. Now, *as* those contracts you have just mentioned, that were to be performed in March; how were they to be performed?

A. In the same way. He ordered us to sell out his March property on January 23rd, 24th, and 26th, and we sold it out.

Q. What happened then by way of balancing the account between you and him?

A. The account, purchase and sale, was rendered to him in precisely the seme manner: if it was sold out lower than it was bought the loss was charged to him and credited to pork account.

Q. And if there was a profit he was credited?

A. If there was a profit he was credited with it.

Q. In neither case any actual barrels of pork or lard passed between you, as I understand?

A. Not between McCrea and Higgins & Gilbert.

Q. Nor between McCrea and anybody else on those transactions?

A. Nor between McCrea and anybody else. We handled considerable stuff.

Q. You didn't handle any pork, as I understand.

A. Only by receipt or offsets.

196 Q. Now, what further transactions did you have with McCrea besides the transactions in contention between you—any?

A. Well, this stuff was charged to June account.

Q. That is, the stuff deliverable in March?

A. The delivery was charged over into June.

Q. That is to say, the March deal was sold out or settled?

A. Sold out and an *an* account, purchase and sales, rendered to Mc-

Crea, and the balance either debited or credited to him and carried into his account, and by his order we purchased June property.

Q. That is, you purchased——

A. We made contracts to be delivered in June.

Q. Substantially an equal number of barrels to be delivered in June?

A. You have only taken 4,000 barrels of pork and 4,000 tierces of lard. It was 5,000 the deal started with, and run right straight through.

Q. What became of the June deal?

A. The June deal was closed out on the 7th and 8th of May.

Q. How?

A. By selling just the amount of stuff we had coming in for June; by contracting to deliver to other parties on the board the same amount, at the market price.

Q. What was the date of the new deal?

A. The sale of it? May the 7th and 8th.

Q. What time was that to be performed?

A. It was for June contracts. We sold out the 500 pork and the 500 lard May the 7th and 8th, and carried the profits to his account by rendering an account, purchase and sales, giving him credit for the difference between the price at which he bought the stuff and the price at which he ordered it sold.

Q. And you rendered him an account of the profit? Did that close the transaction?

A. That closed the transaction of that 5,000 pork and 5,000 lard.

Q. That closed all the business between your firm and him up to the business in contention?

A. It left him with a credit on our books, which he drew on May the 8th and 9th or 7th and 8th—one draft for $10,000 and one draft for $12,000. That left a balance of $1,875 on May the 10th.

197 Q. There was a balance of $1,895?

A. Yes; on our books May 10th.

Q. And that balance of $1,895 constituted part of the margins upon which the deal now in contention commenced, did it?

A. That constituted $1,646.25 of the net profit that he gained in his transactions that he made, and the balance, the difference or balance, was part of the money he had put up with us, one hundred and some odd dollars.

Q. That is, he had made, up to that time, about $1,600?

A. $1,646.25 net profit in that transaction, after paying commissions and everything.

Q. Then the deal commenced which is now in contention and to which you have testified heretofore?

A. Yes; May the 18th and 19th.

Q. And everything was settled and closed up to that time?

A. Yes, sir; everything was settled up to that time, and this was a new transaction.

Q. Do you know what became of those transactions that you made on his account; the last lot that you made on his account deliverable in June, as I understand you?

A. In March.

Q. Do you remember what became of those contracts, so far as you are concerned? Whether you offset those also in your deal up here?

A. Yes, sir; they were offset, or, if left open up to the 1st of June, the contracts were performed.

Q. But as a rule they were offset, were they not, with somebody else?

A. Yes; as a rule.

Q. Look at page 34 of plaintiffs' reply to interrogatories, and state whether that page contains a statement of the names and amounts of pork and lard purchased by your firm on account of Mr. McCrea, which is now in contention between you.

A. (Witness examines page referred to.) Yes; that is correct.

198 Q. And those contracts for pork and lard were offset or disposed of in the manner in which you have stated here in your evidence?

A. Yes, sir; we always having it coming from some one else.

Q. And, as I understand your previous statement, Mr. Gilbert, there was no pork or lard coming from any of these persons that are mentioned in this schedule to McCrea on the 1st of August?

A. No, sir; not on those contracts; we received some from the same parties.

Q. Not on those particular contracts?

A. No, sir; not on those particular contracts.

Q. Will you be kind enough to state, Mr. Gilbert, who constituted the firm of Higgins & Gilbert in 1883?

A. Edward M. Higgins and Fred F. Gilbert.

Q. Did you have any other partners?

A. No, sir.

Q. Was anybody else interested in the firm?

A. There were no other partners in the concern.

Q. Did you have a brother connected with the firm at that time?

A. Yes, sir.

Q. What is his name?

A. Henry D. Gilbert.

Q. He was connected with the firm?

A. Yes, sir.

Q. In what capacity?

A. As clerk.

Q. Did he have any interest in the house?

A. No, sir.

Q. Did he have any interest in any of the contracts?

A. The same as any other clerk. He received brokerage in attending to some of the departments.

Q. He received brokerage as well as a salary?

A. Yes, sir.

Q. What do you mean by that, by brokerage as well as a salary?

A. Well, the same as any house that employs a man to travel on the road. They pay him a commission as well as a salary.

Q. That is, they give him a certain interest in the contracts that he procures, give him the brokerage or commission?

A. Well, it is a certain percentage, a certain per cent. of the business.

Q. They have a certain interest in the busines whatever it
199 is; they have a certain interest in the profits, a certain percentage of the profits of the business?

A. Yes; of the orders of the department they attend to.

Q. As I understand, when the transaction with McCrea commenced you were not at home yourself; you was away?

A. This last August contract?

Q. No, sir; in 1883.

A. Yes; when the property was bought I was away.

Q. You was absent then?

A. Yes, sir.

Q. And in September?

A. In 1882?

Q. No; in 1883.

A. I was here; I came home; I started from the South the day following.

Q. But, as I understand you, the contracts about which the contention arose originally, the first of them, was in May, 1883?

A. Yes; I was away at that time.

Q. And, as I understand you, your brother—this same brother—attended to that business, didn't he?

A. He didn't do any of the trading; he just acted in the capacity of a clerk, corresponding in the office and office work.

Q. That was a case in which he had brokerage, wasn't it?

A. He always had an interest in a certain line of business that was turned over to him to take care of, and he did the clerical work.

Q. You can make it a little briefer by saying whether he had an interest in this transaction.

A. He got his brokerage; the outside business was turned over to him to take care of, and he received his brokerage.

Q. In a case like this, where you had not yet collected the commissions, would your brother be compelled to wait for his interest until it was collected?

A. I don't know whether he ever drew those commissions or not; that is, his interest on it.

Q. According to you recollection and as you understand it, would he be required to wait for his interest or wouldn't he?

200 A. If we didn't get any commission he wouldn't get his brokerage; but, as far as his responsibility was concerned, he wasn't a member of the firm, and had nothing to do with the capital and business, or anything in that way; he merely got a brokerage for attending to this business in a clerical way; he did the corresponding in this case.

Q. What percentage of the brokerage or commissions was your brother entitled to in this case?

A. He can state that if he wants to.

Q. You can tell just as well; there is no objection to that; ten per cent., 20 per cent., or 40 per cent., or what did he have, as you remember it?

A. I am not sure; I cannot answer; I can by going to the office, but I am not sure.

Q. Tell just as near as you can.

A. Either 33⅓ or 50 per cent.; no expenses to stand or anything; nothing about the running of the business.

Q. Now, did your brother represent the firm in the board of trade here to any extent?

A. He was generally on 'change attending to the cash departments, buying car lots, and doing that running around. I don't think he ever traded much in future contracts.

Q. Was he a member of the board?

A. Yes, sir.

Q. Is he still with the firm?

A. No, sir.

Q. When did he retire?

Mr. BOUNEY: From his clerkship?

A. Some time in the fall of 1883; I don't remember the month or the day.

Cross-examination by Mr. BOUNEY:

Q. Your brother had no other relation to your firm but the clerical one which you have described?

A. None whatever.

Q. How long have you been acquainted with James McCrea?

A. Personally?

Q. Yes, sir.

201 A. Either in January, February, or March; along there in those months, in 1882.

Q. Where did you meet him?

A. On the board of trade.

Q. In the city of Chicago?

A. Yes; Chicago, Illinois.

Q. Do you know anything about his transactions on the Chicago board of trade other than those he had with you?

A. Only that he was trading through other houses, and was an old trader; a trader for years here.

Q. State whether the delivery of property on the Chicago board of trade is made in any other way than by paying warehouse receipts or delivery notices, as you have testified.

A. None other.

Q. Would it be possible physically to deliver it in any other way?

A. No, sir.

Q. State whether the rules of the board of trade allow you to make contracts except for actual property.

A. No, sir; only under penalty of suspension or expulsion.

Q. Give the name, if there be any, by which fictitious transactions are known among members of or parties dealing with the board of trade.

A. There are no fictitious contracts recognized by the board. There are puts and calls, but the board of trade doesn't recognize those trades at all.

Q. And you say the penalty of dealing in this way is suspension or expulsion?

A. No; I said the penalty for trading on the floor with the understanding that there was to be no actual delivery is suspension or expulsion.

Q. You have read the answer of James McCrea to your petition or complaint in this case, have you not?

A. Yes, sir.

Q. State whether the rules of the board of trade allow you to conduct such transactions as he says those were between
202 you and him.

A. No, sir.

Q. Under the penalty that you have stated?

A. Yes; suspension for the first offense and expulsion for the second.

Q. When a contract for future delivery is offset and the contract as between the person for whom it was made and the member of the board of trade remains in force and is not extinguished, state to what property the person for whom the original transaction was made, if any, is entitled.

A. If the contracts were offset and other contracts opened on the day of delivery, the first property that is delivered is delivered to the customer that has the first right to it by priority; that is, it is the man we made trades for first.

Q. Do you mean to say that the oldest order purchased or sold in point of time is entitled to the first property that comes in on the delivery, no matter from whom it comes?

A. Yes; most assuredly. We always fulfill the contract for the oldest purchase; the oldest customer gets the first property that comes in.

Q. Does it require any mark or designation or account to give him that priority?

A. No, sir; the contracts and the obligation is between the customer and ourselves, and it stands open; and the first stuff that comes in we always reserve for the oldest customer.

Q. You mean to say, then, that when the Higgins stuff came in August 1st, McCrea, being the oldest purchaser on your list, took that by right of his priority?

A. We reserved it for him; yes, sir.

Q. And then you mean to say that when the Eggleston stuff came in, in the afternoon, those sales being later in point of time than McCrea's, that the property received from them went out to fill the Higgins & Company sales?

A. Yes, sir.

Q. Do you mean to say that what you have stated in regard 203 to priority is a written or printed rule of the board or a custom and usage of the board?

A. It is a custom of the board. All the houses I ever knew always reserved the first stuff coming for the oldest purchaser. There is no identity to those contracts on the book; only an aggregate.

Redirect examination by Mr. BURKE:

Q. Will you be kind enough to read the entire heading of the book?

A. "August pork bought. Date. Number. Bought of. Account. Quantity. Terms. Price. Folio. Date of settlement. Price. With whom settled. Margins." This is obsolete (referring to margin headings).

Q. What does date mean?

A. The date of purchase.

Q. What does number mean?

A. Well, some houses number their trades and some don't. We always number ours.

Q. Bought of—what does that mean?

A. The party on the board we bought of.

Q. What does account mean?

A. For whose account it is.

Q. For whose account you made the purchase?

A. Yes, sir.

Q. How do you indicate on your book for whose account the purchase is made?

A. By initial or number.

Q. How is it indicated in this case?

A. By J. McC.

Q. What does quantity mean?

A. The quantity of each item.

Q. The number of barrels or tierces?

A. Yes, sir.

Q. Terms—what does that mean?

A. When the property is deliverable.

Q. What does price mean?

A. Price paid for the property.

Q. Folio—what does that refer to?

A. I don't know what that means; we keep it as a check between our customers' ledger and this book.

Q. Date of settlement—what does that mean?

A. That means the date that the trades are offset.

204 Q. Price means the price at which it is to be delivered?

A. The price which it is offset with.

Q. With whom settled—what does that mean?

A. We have used numbers, you see, instead of names; for instance, 1 is offset with 10, and 10 is offset with one, instead of writing it out in full. That margins is nothing; it is the column we use for the number in the offset book.

Mr. RIDDLE: There is nothing in that book to show delivery.

Mr. BONNEY: The sold side shows the delivery.

Mr. BURKE: Turn to the other contract book—lard—turn to McCrea's account there, please.

A. "August lard bought. Date. Number." It is just exactly the same.

Q. The same form as the other book?

A. Yes, sir; the only way it is changed is by our filling in.

Q. How do you indicate there for whose account the purchase was made?

A. In just the same way—James McC.

Q. And that entry was made in regard to all the purchases made for McCrea that are now in contention?

A. It was pork or lard.

Mr. SANDERS: What do you call these books?

A. Future contract books; option books.

Mr. BURKE: And what other books have you that contain entries in regard to transactions with McCrea? Just describe them.

A. Customers' ledger; that is all. The future books and the ledge-s where his ledger account is.

Recross-examination by Mr. BONNEY:

Q. In the answers you have just given you designate a column which you say is used to show the offsets of property; you may state whether there is a counter-page in some book in which the actual sales of property are entered?

A. Yes, sir.

205 Q. Mr. BURKE: Where is that page; refer to it, please?

A. On the opposite side.

Q. Go on and give us the heading.

A. The only difference is—"sold to," "date, number, sold to, account, quantity, terms, price, folio, date of settlement, price, with whom settled, margins."

FRED. F. GILBERT,

Sworn to before me this 9th day of April, A. D. 1885.

[SEAL.] PHILIP A. HOYNE,

U. S. Commissioner, N. D. Ills.

Adjourned to 2.30 p. m.

Deposition of E. M. Higgins.

THURSDAY, *April 9th*, 1885—2.30 p. m.

Present: Counsel as before mentioned and Edward M. Higgins, one of the plaintiffs in this cause, a witness produced by and upon the part of the defendant, and the said EDWARD M. HIGGINS, being first duly sworn, examined in chief by S. BURKE, Esq., testified as follows:

Q. Mr. Higgins, you are a member of the firm of Higgins & Gilbert?

A. I am.

Q. How long have you been in business in Chicago?

A. Four years the 10th of last March.

Q. You are a son of Mr. Higgins, of Higgins & Co. of this city?

A. I am.

Q. In March, 1884, you filed a reply and answers to sundry questions put to you by the defendant in this case of yourselves against McCrea. I desire to direct your attention to page 34 of that reply, and ask you if the list there given is a true list of the persons from whom your firm bought lard and pork upon account of Mr. Crea?

A. It is a correct list.

Q. Now, will you be kind enough to look the list over
206 and state whether, upon the 1st day of August, 1883, or at
any time during the month of August, 1883, any of the
persons upon the contracts therein referred to delivered to you upon account of McCrea any of the pork or lard specified in these particular contracts?

Question objected to by Mr. Wing on the ground that the question assumes that any specific lard or pork was mentioned in any contract.

Mr. Bonney: Between the plaintiffs and McCrea.

A. According to the rules of the board of trade that stuff was either delivered to us or, by the rules to the board of trade, offset and the equivalent delivered.

Mr. Burke: You will note that in this schedule you say, and there are your words, "The following are the addresses of the parties from whom we bought the property for James McCrea, being August delivery, as shown below." Is that correct?

A. Do you wish to know if these are the parties that we bought the stuff of?

Q. Yes, sir.

A. That is the question I answered before, is it not?

Q. Yes; please repeat it.

A. They are.

Q. Mr. Bonney: The heading is correct?

A. Yes, sir.

Q. Mr. Burke: Now, I desire to have you state whether—state how much pork or lard your firm purchased upon account of McCrea from each of the persons specified in that last?

Mr. Riddle: That schedule shows it exactly.

A. That is shown right here (referring to schedule).

Q. Mr. Burke: Tell me how much from each one?

A. 1,000 pork from Geo. C. Eldridge & Co., at $19.50, for August delivery; 250 barrels, Cudahy & Stevers, at $19.82½; 250 barrels of James P. Taylor, $19.82½; 250 barrels of W. H. Silberhorn, $19.82½; 250 barrels, Cudahy and Stevers, $19.82½; 1,000 barrels, Blair and
Blair $19.95—that is pork. The lard—500 tierces, Fowler
207 Bros.', at $17.71½; 250 —, Geo. C. Eldridge, $11.77½; 250 —,
Pool, Kent & Co., $11.85; 250 —, Geo. D. Baldwin, $11.77½;

250 — of L. M. Studwell, $11.82½; 500 —, Geo. C. Eldridge, $11.85; 1,000 — of Wm. Kirkwood, $11.82½.

Q. Now, will you be kind enough to state what became of the contract for the 1,000 barrels, or the contracts, if it was in several contracts, for the thousand barrels of pork that you made with Geo. C. Eldridge & Co.? What became of that contract, or those identical contracts?

A. According to rule 26, section 6, of the board of trade rules, that was offset with contracts and other purchases substituted.

Q. Did you offset that against some other contract that you held for McCrea or some other person?

A. With contracts that were on our books.

Q. Mr. ROMNEY: With other persons?

A. With other persons.

Mr. BURKE: Now, with Mr. McCrea?

A. No, with other parties on the exchange.

Q. Is it true that you made use of all the rest of the contracts in this schedule in the same way—by offsetting them with other people upon their contracts?

A. I couldn't say whether they were all offset in that way or not.

Q. Do you know of any that were not used in that way?

A. I cannot say.

Q. How can you ascertain that fact?

A. By looking at the schedule (witness refers to schedule). They were all offset in the same way, according to the rule of the board of trade.

Q. Now, then, what did you do after the purchases were made; were they made use of by you to facilitate your own business in the way of offsets?

A. I couldn't say.

Q. Have you the dates before you so that you could tell?

A. I couldn't tell, no. It isn't given here what day they were offset

208 Q. If you have a contract with any one, as Geo. C. Eldridge & Co., for the delivery of a thousand barrels of pork in August, and you make use of that to offset it with some other member of the board of trade that you have a contract with, that you are on the other side of, and you give it up to offset it, what have you to do with that contract after that?

A. It isn't virtually given up, another trade immediately takes its place.

Q. I am afraid you don't quite understand me.

A. You mean to say that that trade with Geo. Eldridge is cancelled: is that the idea?

Q. I am trying to have you tell me which way it is; what is the effect of offsetting, so far as the particular contract that is made use of is concerned?

A. No effect whatever.

Q. What do you do it for, then?

A. It is done to facilitate business. If on the 1st of August this pork and lard was open with these parties, it may be bought of them and sold to them on the same deal; it may be bought of them at $18 and sold to them at $19. The 1st of August the pork might come in to us; we would take it over to Mr Eldridge, and, to facilitate the business, we offset, and Mr. Eldridge pays $1 a barrel; instead of taking that particular pork, we deliver to him and exchange check.

Q. Supposing that it is true that on the 22nd and from that on to the 25th of May—this stuff having been purchased the 19th of May—your firm offset the contracts with Eldridge & Co. at that date, what would be the purpose of making it at that time?

A. On May 19th?

Q. From May 22nd to 25th, say, what would be the purpose?

A. I don't understand the question.

Q. As I understand it, your firm held a contract for the benefit of Mr. McCrea, by which Geo. C. Eldridge & Co. had agreed to 209 deliver to your firm, as the brokers and agents of McCrea, a thousand barrels of pork. That is where you commenced, isn't it?

A. I don't exactly remember the date.

Q. Assuming that to be the correct date, it was commenced by buying from Geo. C. Eldridge & Co. a thousand barrels of pork upon the account and order of McCrea, wasn't it?

A. I suppose so.

Q. Or did you in fact buy any pork for McCrea *in* his account?

A. Yes, sir.

Q. If you bought you bought of somebody, didn't you?

A. Yes, sir.

Q. You say from Geo. C. Eldridge & Co., that date—it was deliverable in August?

A. It was.

Q. Now, supposing you offset that contract, technically or any other way, under the rules of your board of trade—supposing you offset that contract on the 25th day of May, would you have any further claim on Eldridge & Co. for that pork after you made an offset of it?

A. We had a claim on him for the difference between the price that the other contract was substituted for.

Q. You don't quite understand me. I want to know, after you have made use of this contract for 1,000 barrels of pork by way of offsetting it—on the 25th of May, I will say—after you have done that would you have any claim on Eldridge under that contract to deliver any pork to him on the 1st of August, or in August following—I am ta-king only about that contract with Eldridge?

A. We would have an equivalent coming from other parties on the board of trade.

Q. Answer my question, please.

A. Of course we wouldn't have anything to do with that one trade.

Q. Well, what is the objection to telling about it?

A. I suppose there is no objection to telling; I don't understand your question, hardly; that is all.

Q. Mr. BONNEY: Have you any further claim on Eldridge & Co. for that pork, after the contract with him has been offset?

210 A. Not after he paid the difference.

Q. Mr. BURKE: As I understand, by offsetting, if you have a thousand barrels of pork coming from Eldridge, and you have agreed with him to deliver him a thousand barrels of pork on account of somebody else, if the price is precisely the same, you and Eldridge offset one against the other, don't you—and call them even—isn't that the idea, if the price is exactly alike?

A. Yes, if they wish to do it.

Q. Yes, if you happen to wish to do it, of course.

A. Yes, sir.

Q. Now, will you be kind enough to state what notice, if any, you gave to McCrae of having made use of those contracts made on his account to facilitate your own business—did you give him any notice about it?

A. I couldn't say as to that, at all, because I have nothing to do with the running of the books.

Q. You gave him none?

A. No, I gave him none.

Q. Now, will you be kind enough to state which one, if any, of the parties from whom you bought the pork and lard specified in this schedule, page 34, was under contract obligations, growing out of contracts specified in this schedule, to make delivery to you for McCrae of any pork or lard in August?

A. We had contracts with them.

Q. With those people?

A. With those parties.

Q. Did you have these contracts—were these contracts in life, any of them?

A. We had contracts with these parties for the delivery of that stuff.

Q. Were any of these contracts entered into on or about the 19th of May?

A. I don't remember the date of the purchase, but when the purchase was made contracts were made for the delivery of the pork and lard.

Q. Then if you had the pork and lard coming on these contracts, will you be kind enough to tell me why you made use of 1,500 barrels of pork coming from Higgins & Co., and tried to turn that over?

211 Mr. BONNEY: The witness evidently does not understand the question.

Q. Mr. Burke, if you had the pork and lard coming from these particular parties mentioned in the contracts, the pork or lard that was coming from any of the persons mentioned in this schedule was coming from contracts made with them upon behalf of other clients or customers?

A. We didn't have any contracts with McCrea, you mean?

Q. If you had pork or lard coming to you on the 1st of August, from any of them, it was by virtue of some other contract you had made with them, wasn't it?

A. Yes, from other parties.

A. If you had any pork or lard coming from any of the parties named in this schedule, upon what contract or contracts was it coming to you?

A. On the contracts substituted.

Q. Will you be kind enough to tell me any contract that you had with any one of those persons that was substituted?

A. I can tell you by looking. Geo. C. Eldridge was offset with Henry Memory; the trade was then coming from Wm. Kirkwood; is that the idea?

Q. No, sir.

A. That is all I can tell you.

Q What was coming from Wm. Kirkwood?

A. 250 barrels of pork.

Q. Wasn't the Wm. Kirkwood matter substituted also with somebody else, or offset?

A. It was afterwards coming from Rumsey and Chandler, and so on down, until the pork was received and paid for.

Q. I notice, following down the offset here, that you get down finally to Higgins & Company. I don't observe any connection between prior contracts with Higgins & Company; was there any?

A. Geo. W. Higgins & Company was paid by Higgins & Gilbert.

Q. You buy the pork of Geo. W. Higgins & Company?

A. No, sir; the pork was sold; Higgins & Gilbert had it sold for Geo. W. Higgins; the delivery was actual pork, and we paid them for it.

Q. What time did they deliver it?

A. The 1st of August they delivered the contract.

Q. You had a contract with them, did you?

A. Yes, sir.

212 Q. Upon whose behalf or order was that contract made?

A. I suppose, of course, on behalf of Mr. Geo. W. Higgins.

Q. But, as I understand by your books and your partner, when you purchased of Mr. Higgins you purchased upon the account of some customer that you had—somebody who had ordered you to buy it?

A. We sold for Mr. Higgins to parties on the board.

Q. Who did you sell it to, do you remember?

Mr. Bonney: By Geo. W. Higgins you mean Geo. W. Higgins of the firm of Higgins & Company?

A. Yes, sir.

Mr. Burke: Now, how do you know by your books; what is there upon your books that will indicate for whose benefit or upon whose account you have made purchases of pork or lard?

A. I can bring the books here and show you; I couldn't say anything about it until I saw the books.

Q. Mr. Bonney: The question is what kind of entry, not what particular entry you did make, but what kind of an entry you make when you are making a purchase or sale.

A. We put it down on our books; we write it down on our books.

Q. Mr. BURKE: Then, under the head of "Account of" you write down who the purchaser is; is that the idea.

A. Who we sell this stuff to?

Q. Or if you buy it, for whom you buy it, is that the idea?

A. Yes, sir.

Q. So, for instance, when you bought a thousand barrels of pork from Geo. C. Eldridge & Co. your book would show from whom you purchased the pork and upon whose account you purchased the pork, would it not, if it was properly kept?

A. Yes, sir.

Q. Do you remember how McCrea's name appeared on your contract book at that time?

A. I cannot say untill I see the book; I could tell you quick as soon as the books were here.

Q. It was in the ordinary way, either by his initial or his full name?

A. I can't tell you which way it is, but I could tell you by the books.

213 Q. Whatever it is on the books in that respect you suppose it to be correct?

A. Yes. sir.

Q. Now, when you offset a contract and substitute another in its place, what is there upon your books to show what contract takes the place of the one you have given up?

A. The one that was substituted for it.

Q. And, if you haven't so marked any one as a substitute for it, then you would assume that you made no substitution, wouldn't you?

A. Not necessarily.

Q. Why not?

A. Because we are always liable to the parties.

Q. How did you know what contract took the place of it unless you marked it?

A. We have the stuff—the pork—coming in.

Q. Somebody owes you pork; is that the idea?

A. Yes, sir; I can't tell exactly who, now.

Q. You don't mean that Higgins & Gilbert substituted themselves, do you?

A. No, sir.

Q. Who did they substitute, unless they marked some particular name?

A Well, the pork is always coming in; that is all I can tell you about it. It is ready for Mr. McCrea when he wants it; that is all.

Q. Who gets it for him?

A. The pork is delivered.

Q. Who gets it ready?

A. The parties on the board of trade deliver it to whoever it is coming from.

Q. What is kept on your books to show who it is coming from;

how is it kept through July, for instance, to show who it is coming from?

A. It is kept in the regular contract-book.

Q. In the name of McCrea?

A. Everything entered on our contract-book is Higgins & Gilbert, bought of the parties on the board of trade.

Q. I have seen your book, and it says Higgins & Gilbert in the
caption, and in the leaf who you purchased from, and under
214 the next heading, or in the next column, it shows whom you
purchased on account of, and, very likely, your book shows
the purchase made on account of McCrea, but I cannot find McCrea's name on your book, and now I want to know how you knew which contract belonged to McCrea and which to somebody else.

A. Mr. McCrea's account was in our ledger.

Q. What was in there?

A. The purchase of the pork and lard.

Q. Well, in the first place, of course—in the first place you put it down well enough, but the point is, after you had offset those contracts how did you know, and how did anybody know, who he held instead of Eldridge, for instance?

A. He held Higgins & Gilbert.

Q. He held Higgins & Gilbert, and nobody else, so far as you know?

A. Well, the pork was coming to him; he didn't know who it was coming from.

Q. Coming from him——

A. Coming to Higgins & Gilbert, and from Higgins & Gilbert to Mr. McCrea.

Q. So, after you offset the contracts which you first made, then McCrea held Higgins & Gilbert only, so far as you know?

A. He had nothing to do whatever with the parties on the board of trade.

Q. Nothing to do with anybody else; is that correct?

A. Yes, sir.

Q. I want to ask you a question about Mr. Henry Gilbert, a brother of your partner—the one that was in your employ for some length of time; do you remember who that is?

A. Henry D. Gilbert.

Q. You may state what interest Mr. Henry D. Gilbert had in the deal with McCrea.

A. He had his per cent. of the brokerage; that is all.

Q. Do you remember what that was?

A. No, sir; I couldn't say.

Q. About how much?

A. I should think maybe a quarter or a half.

Q. One or the other; something of that kind?

A. Yes; something of that kind.

Q. Is he still with your firm?

A. No, sir.

Q. Was he at any time a general partner of your firm?

A. He never had any interest in it.

Q. How, then, did he become interested in the commissions in the McCrea transaction?

A. We gave him a quarter.

Q. For doing something—for doing what; what did he do to earn that?

215 A. What did he do to earn the commission?

Q. Yes, sir.

A. I don't know what he did to earn it.

Q. There was some reason, of course, for giving a quarter of the commission to him; what was the reason is the point I am asking about.

A. Why, all the trade that he could get we allowed him a certain commission on.

Q. At all events, he had an interest in that particular deal, didn't he?

A. He had his percentage in the brokerage; that is all; he had no interest whatever in anything else.

Q. That was either a quarter or a half, you don't remember which. You may state whether Mr. Henry D. Gilbert, in 1883, during the time of the transaction in question, was a member of the board of trade here in Chicago?

A. I couldn't say.

Q. Don't you remember that he looked after the business?

A. I don't know whether he was a member, or what he had to do on the board of trade.

Q. Didn't he make purchases and sales there on account of your firm?

A. I couldn't say.

Q. You don't know about it?

A. No, sir.

Q. Which member of your firm is most familiar with this transaction in dispute, yourself or Mr. Gilbert?

A Mr. Gilbert.

Q. He has had more particular charge of it than you have?

A. He has charge of the office in chief, of everything.

Cross-examination by Mr. BONNEY:

Q. State whether, in any instance, you offset one of the original purchases on account of McCrea, without having the same amount and quality of stock coming from another equally good party.

A. Do you mean me to say whether we always had it coming?

Q. Yes, sir.

A. We always had it coming.

216 Q State whether the rules of the board allow you to offset a contract without having the same amount and quality of stuff coming from another party.

Mr. RIDDLE: The rule will show that.

A. The board of trade always holds a party responsible to his customer; we always must have it coming from some other party.

Q. Mr. BONNEY: After you offset all those first contracts, McCrea looked to Higgins & Gilbert and held them responsible; when you claim that, wasn't there somebody from whom you had stuff coming back to you who was also responsible?

A. There was.

Q. You mean to say that there was always, from the time that the first purchases were made for McCrea, that double liability, you to McCrea, and somebody from whom the stuff was coming through him to you?

A. Yes, sir.

Q. State whether you ever notified McCrea of the persons from whom you first made the purchase?

A. We never notified him of the purchase.

Q. Did you give the name of the person?

A. No, sir.

Q. Do you ever do that in the course of your business?

A. No, sir.

Q. And you don't give the names of the persons substituted?

A. Never.

Q. Suppose McCrea had come here and said, You have offset the contracts you first made for me; show me, then, from whom the stuff is coming. Could you have turned over in your books and showed from whom the stuff was coming?

A. We could.

Q. Where you have several purchases outstanding for future delivery for a given month, when the time of delivery arrives, and the property begins to come in, state, if you can, who is entitled—which one of the several purchasers is entitled to the property first received by you?

A. The property that was bought for the first customer.

Q. In order of time?

A. In order of time.

Q. Then you mean to say you know who the substituted parties are without any mark, and the oldest in time takes the first delivery?

A. Yes, sir.

217 Q. Then, when the stuff came in, on account of Geo. W. Higgins & Co., was that older or younger, in point of time, than McCrea's?

A. Geo. W. Higgins & Company, the date he sold or when they delivered the stuff?

Q. When they delivered it to you for delivery.

A. We gave it to the first man that had it bought.

Q. Who was that?

A. Mr. McCrea.

Q. Then you filled G. W. Higgins & Company's sales that they had made from what source?

A. What do you mean?

Q. You took Higgins' stock and turned it over to McCrea, then you filled the Higgins & Company sale?

A. We had McCrea's stuff sold out.

Q. You had other deliveries coming in in the afternoon?

A. Yes, sir.

Q. *Who* had 1,500 barrels come in that afternoon?

A. Yes, sir.

Q. From whom?

A. Different parties on the board.

Q. Can you name them?

A. No, sir.

Q. You took that stuff and paid it out on the Higgins & Company's delivery, didn't you?

A. Yes, sir.

Q. How long have you known James McCrea?

A. I couldn't say how long I have known him personally. I have known him by sight for a long time.

Q. Have you ever seen him here?

A. I have.

Q. Where?

A. On the board of trade in Chicago.

Q. State, if you know, whether he has dealt on the board of trade through other houses than yours.

A. He has; for the last 15 years.

Redirect examination by Mr. BURKE:

Q. You were inquired of by Mr. Bonney in regard to how you made performance of Higgins & Company's contracts after you had used the stuff coming from that firm to fill the McCrea contract.

A. We had the equivalent coming in.

Q. You remarked, in answer to that, that you had McCrea's stuff sold out, and you filled the contract with that; isn't that true?

218 A. I didn't mean that; we have an equal amount of stuff coming in and going out, and that is what filled Mr. McCrea's order, Mr. Higgins' stuff.

Q. You didn't mean Mr. McCrea's, did you?

A. No, sir; certainly not. We had lots of trades bought and lots sold. I couldn't tell the identical ones that were delivered, we had the equivalent coming in and going out; I couldn't tell the identical stuff, or anything like that.

Q. But the selling out of McCrea enabled you to comply with some other contracts, didn't it?

A. No, sir.

Q. What do you mean by that, then?

A. I mean when McCrea's stuff was sold it was delivered.

Q. Mr. BONNEY: To the parties who bought it, you mean?

A. Yes, sir.

Q. Mr. BURKE: You sold out, for instance, for McCrea a certain amount of pork and a certain amount of lard, as I understand you, upon the 1st day of August, 1883?

A. Yes; the first day of August, I think it was.

Q. Do you remember to whom you sold it?

A. No, sir; I couldn't say.

Q. Do you remember to whom you made delivery, to any party?

A. I couldn't tell you, sir; Mr. Gilbert couldn't tell; I could refer to the books.

Q. You didn't attend to it personally?

A. No, sir; I did not.

Q. And hence you couldn't tell to whom you sold any part of it or to whom you delivered any part of it?

A. Not without reference to the books.

Q. Personally, you don't know?

A. No; personally, I don't know.

EDWARD M. HIGGINS.

Sworn to before me this 9th day of April, 1885.

[SEAL.] P. A. HOYNE,
U. S. Com'r, N. D. Ill.

219 And be it also remembered that on the trial of this cause the plaintiffs, by their counsel, requested the court to charge the jury as follows:

Charge to the Jury.

1. That the question whether there had been a compliance by the plaintiffs with the rules of the Chicago Board of Trade regulating offsets, and the substitution of parties was a question of fact to be found by the jury according to the evidence, but the court believing that in view of the charge actually given and to be hereafter shown, made no specific response to said request. The court explained what would and what would not constitute a gambling contract, to which no exceptions were taken, and then said among other things not excepted to—

"It is legitimate for the parties to make a contract for the delivery property at some future period, provided they mean a real and *bona fide* contract, and the law recognizes the obligation and will enforce it. If the contract is void for the reason heretofore stated, the plaintiff cannot recover anything, nor could the defendant recover on his cross-action. The law in that contingency would leave the parties in the situation that they have placed themselves, and no recovery could be had by either plaintiffs or defendant. But if you should be of opinion that although the defendant entertained the opinion that it was a gambling transaction, the plaintiffs did not participate in that view of the question, but contemplated and intended an actual purchase, and an actual sale, the contract would be binding between the parties, it will become your duty to go further and make an additional finding.

"Assuming that this contract was valid and enforcible, the defendant says that he is not bound, for the reason that after the 220 purchases were made by these plaintiffs as his agents, and for his account, they cancelled the contracts and released the vendors therefrom, and that they did that without authority from him, and without his knowledge or his subsequent ratification. Upon that state of facts, if found to be true, the plaintiffs could not recover anything; that cancellation of the contracts and release of the vendors would have absolved the defendant from any obligation to pay the plaintiff for the property so purchased by them for his account. But the plaintiffs in reply say that the board of trade has certain rules and regulations, which the court has permitted to be offered in evidence to you, and that under and in accordance with these rules they had a right to cancel these contracts and substitute others in place of them; that these rules were known to and understood by the defendant, and that he, with that knowledge, acquiesced in the cancellation of the contracts, and the alleged substitution of others in the place of those cancelled.

"For present purposes, and without expressing any opinion upon this proposition, the court instructs you that you may, for the purposes of this case, assume that the defendant did know and did consent that these plaintiffs might act under the 6th section of the 26th rule, and that such knowledge and acquiescence of his authorized the plaintiffs to cancel the first contracts and substitute others in their place. But the court instructs you that, assuming plaintiff's contention in this regard to be true, and assuming that the plaintiffs themselves have told the truth in this case, there has been no valid substitution of other contracts for those that were cancelled, and that the plaintiffs cannot, therefore, for that reason, upon their own testimony, recover anything in this action.

221 "If you find upon that question the original contract to have been valid, and that the defendant is excused or absolved from liability because of this attempted substitution, which the court instructs you was not made in accordance with said rule, then and in that case the defendant will be entitled to recover upon his cross-action against the plaintiffs for all the money which he advanced in pursuance of these contracts."

This charge, upon the request of the jury for further instructions, — subsequently repeated to them, and the plaintiffs then and there excepted to the charge of the court in the following particulars, to wit:

1. It allows the defendant to recover notwithstanding his confession of record that he intended to gamble.

2. It allows the defendant to recover in virtue of plaintiff's innocence by giving the defendant a verdict for what he says were gambling advances.

3. It takes from the jury the pure question of fact whether the plaintiffs substituted other contracts for those cancelled by offsets and usurps the province of the jury by assuming to find that fact for them, and to make it a bar to plaintiffs' claim, whereas the jury had a right to find that fact the other way and to bind and conclude the court by such finding.

4. It instructs the jury in effect that they may base their verdict upon either of two inconsistent positions taken by the defendant in his amended answer and counter-claim instead of directing the jury that the defendant must elect to take one of the two positions.

5. It directs the jury with respect to a finding of fact upon which there is conflicting testimony.

222 6. There being no proof of any damage suffered by the defendant by reason of the acts or omissions of the plaintiffs complained of, it directs the jury that, in the event that they find

the transactions to be other than gambling transactions, they must render a verdict for the defendant on his counter-claim to the amount of the moneys advanced to the plaintiffs.

And said plaintiffs having filed a motion for a new trial, and such motion having been overruled the said plaintiffs except to the said ruling of the court and the judgment rendered thereon and pray the court here to sign and seal this bill of exceptions and order the same to be made a part of the record, which is accordingly done.

JOHN BAXTER, [SEAL.]
Judge, &c.

223 Know all men by these presents that we, Edward M. Higgins and Fred. F. Gilbert, as principals, and George W. Higgins and Francis J. Wing, as sureties, are held and firmly bound unto James McCrea, defendant, in the full and just sum of five hundred dollars, to be paid to the said James McCrea, respondent in error, or to his certain attorneys, executors, administrators, or assigns; to which payment, well & truly to be made, we bind ourselves, our heirs, executors, and administrators, jointly & severally, by these presents. Sealed with our seals and dated this 17th day of October, in the year of our Lord one thousand eight hundred and eighty-five.

Whereas lately at the April term, A. D. 1885, of the circuit court in and for the northern district of Ohio, eastern division, in a suit depending in said court between Edward M. Higgins and Fred. F. Gilbert, plaintiffs, and James McCrea, defendant, there was rendered against the said Edward M. Higgins and Fred. F. Gilbert, on the counter-claim of said James McCrea, a judgment in the amount of $22,062.40, and the said Edward M. Higgins and Fred. F. Gilbert having obtained a writ of error and filed a copy thereof in the clerk's office of the said court to reverse the said judgment in the aforesaid suit, and a citation directed to the said James McCrea having been issued citing and admonishing him to be and appear at a Supreme Court of the United States to be holden at Washington on the second Monday of October next, to wit, on Monday, the second day of November next:

Now, the condition of the above obligation is such that if the said Edward M. Higgins and Fred. F. Gilbert shall prosecute their 224 writ of error to effect and answer all costs, if they fail to make their plea good, then the above obligation to be void; else to remain in full force and virtue.

(Signed) EDWARD M. HIGGINS. [SEAL.]
FRED. F. GILBERT. [SEAL.]
GEORGE W. HIGGINS. [SEAL.]
FRANCIS J. WING. [SEAL.]

Approved.

M. WELKER,
Dist. Judge U. S., N. D. O.

Filed October 19th, 1885.

A. J. RICKS, *Cl'k.*

225 UNITED STATES OF AMERICA, } ss:
Northern District of Ohio, }

I, Augustus J. Ricks, clerk of the circuit court of the United States for said district, do hereby certify the above and foregoing to be a true, correct, and complete transcript of the record of all the proceedings had in said court in the cause wherein Edward M. Higgins and Fred. F. Gilbert are the plaintiffs, and James McCrea is the defendant, as the same appears from the files and records of said court now remaining in my custody.

In testimony whereof I have hereunto set my hand and affixed the seal of said court, at my office in Cleveland, in said district, this twentieth day of October. A. D. 1885, and in the one hundred and tenth year of the Independence of the United States of America.

[Seal of the Circuit Court, North'n Dist. of Ohio.]

AUGUSTUS J. RICKS, *Clerk.*

226 *Assignment of Errors.*

UNITED STATES OF AMERICA, *ss:*

In the Supreme Court, of the October Term, A. D. 1885.

EDWARD M. HIGGINS and FRED. F. GILBERT, Plaintiffs in Error,

vs.

JAMES MCCREA, Defendant in Error.

Error to the eastern division of the northern district of Ohio.

And now come the said Edward M. Higgins and Fred. F. Gilbert, plaintiffs in error, by C. C. Bonney, their attorney and counsel, and say that in the proceedings and final judgment of the said circuit court of the United States for the eastern division of the northern district of Ohio there is manifest error in this, to wit:

1. That upon the trial of this cause said circuit court withdrew from the jury the question of fact whether the plaintiffs in
227 error, who were also the plaintiffs in the court below, had or had not complied with the rules, usages, and customs of the Chicago Board of Trade in the transactions which were and are in controversy in this cause; and that thereupon said circuit court decided said question of fact against said plaintiffs, and charged the jury that they were bound by said decision; whereas it was the duty of said court to leave the decision of said question wholly to said jury.

2. And that upon said trial said circuit court charged the jury in substance that certain substitutions of contracts which were and are in controversy in this cause were not, as a matter of law, made in accordance with the rules of said board of trade; whereas it was the duty of said court to leave said question to said jury, and the right and privilege of said plaintiffs to have said jury find the question involved as a matter of fact.

3. And that said court also charged said jury in substance that if

they should believe from the evidence that the transactions of the plaintiffs involved in the case were had and made in good faith, and without any intent on their part to engage in gambling, then and in that case the defendant would be entitled to recover upon his cross-action against the plaintiffs the amount of money which he had advanced in the course of the transactions; whereas said defendant had, by his averments in his answer and by his testimony
228 upon the trial that his intent and purpose was to gamble and not to conduct honest and *bona fide* transactions, wholly and absolutely barred himself from having or recovering the amount of his said claim or any part thereof.

4. And that the said circuit court in its charge to said jury assumed to direct and conclude them in respect of divers matters, in regard to which there was a conflict of evidence; whereas all such matters should have been left to said jury, to be found by them according to their own opinion and judgment of the weight of the testimony and the credibility of the witnesses.

5. And that said circuit court charged said jury in substance and to the effect that a mere alleged irregularity, which was denied by the plaintiffs, and upon which they had the right to have the finding of the jury, in the matter of conducting the transactions involved in the suit, was sufficient in law to bar their claim for the amount of money actually lost by them in the conduct of the business directed by the defendant, and that such alleged irregularity was also a sufficient ground to entitle the defendant to recover the advances he had made in the course of the business; whereas the said circuit court should have charged the exact contrary, and should have told said jury that if they believed from the evidence that the plain-
229 tiffs had, in good faith, substantially complied with the directions received from the defendant and had conducted the business without fraud they were entitled to recover.

6. And that the jury having found in effect that the transactions of the plaintiffs were conducted in good faith, the said circuit court should have rendered judgment in favor of said plaintiffs notwithstanding the form of the verdict was, under the direction of the court, in favor of the defendant.

7. And that said court did not charge said jury, as it was the manifest duty of the court to do, that there was no evidence in the case tending to show that the defendant had suffered any damage, injury, or loss by reason of the alleged irregularity in the manner in which the plaintiffs substituted the contracts under the rules of the board of trade in the course of the business in controversy.

8. And that, notwithstanding the errors aforesaid, the said circuit court rendered judgment on the verdict of the jury against said plaintiffs and in favor of said defendant.

9. And that said proceedings and judgments are in many other respects manifestly informal, insufficient, irregular, and con-
230 trary to law in divers particulars, which will be specified in the brief to be filed in said Supreme Court.

All which errors were committed against the objection and exception of the plaintiffs, duly made out and saved.

Wherefore the said plaintiffs in error pray that the said Supreme Court of the United States will proceed and consider the proceedings and judgment aforesaid, and particularly the matters aforesaid above assigned for error; and that the judgment aforesaid may for the errors aforesaid, respectively, be annulled, reversed, and altogether made as nothing; and that the said circuit court may be directed to enter judgment upon the record aforesaid in favor of said plaintiffs, and against said defendant for the amount which said record shows to be their due, etc., and that said plaintiffs may be restored to all things which they have lost by reason of said errors and judgment, and that they may have and recover their costs and charges in this behalf most wrongfully sustained, &c.

CHARLES C. BONNEY,
Attorney and Counsel for Plaintiffs in Error.

231 UNITED STATES OF AMERICA,
Northern District of Ohio:

U. S. Circuit Court, Northern District of Ohio

A. J. Ricks, clerk, office eastern division, Cleveland, O.; office western division, Toledo, O.

CLERK'S OFFICE,
CLEVELAND, O, *November 7th*, 1885.

I, Augustus J. Ricks, clerk of the circuit court of the United States for said district, do hereby certify that the foregoing assignment of errors was filed in this court on November 2nd, 1885, and is a part of the files and records in the case therein entitled, of Higgins & Gilbert, partners, as Edward M. Higgins and Fred. F. Gilbert, as plaintiffs, and James McCrea, as defendant, and the same should be appended to the transcript of record in said case heretofore forwarded and docked in the Supreme Court of the United States as No. 1193, October term, 1885.

[Seal of the Circuit Court, Northern Dist. of Ohio.]

In witness whereof I have hereunto affixed my official signature and seal of office, at Cleveland, Ohio, on this 7th day of November, A. D. 1885, and of the Independence of the U. S. of America the 110th year.

AUGUSTUS J. RICKS, *Clerk.*

232 [Endorsed:] Sup. Court U. S., 1885, Oct. term. No. 1193. Higgins & Gilbert *vs.* McCrea. Assignment of errors. [Stamped:] Office Supreme Court U. S. Filed Nov. 9, 1885. James H. McKenney, clerk.

Endorsed on cover: N. Ohio C. C. U. S. No. 1193. Edward M. Higgins and Fred. F. Gilbert, partners doing business as Higgins & Gilbert, plaintiffs in error, *vs.* James McCrea. Filed October 30, 1885.

116-671

Office Supreme Court U. S.
FILED
DEC 11 1885
JAMES H. McKENNEY,
CLERK

IN THE

SUPREME COURT OF THE UNITED STATES,

OCTOBER TERM, A. D. 1885.

NO. 1192.

HIGGINS & GILBERT *v.* Mc CREA.

Error to E. Div. of N. Dist. Ohio.

STATEMENT OF THE CASE WITH BRIEF AND ARGUMENT FOR PLAINTIFFS IN ERROR.

By C. C. BONNEY,

Counsel.

CHICAGO
PRINTED BY THE CHICAGO LEGAL NEWS COMPANY 175 MONROE STREET.
1885.

IN THE

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OCTOBER TERM, A. D. 1885.

NO. 119~~7~~8.

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HIGGINS & GILBERT v. McCREA.

CONTENTS.

I.

PAGE.

STATEMENT OF THE CASE............ 3

1. The Original Pleadings.................... 4
2. First Examination of Plaintiffs............. 7
3. Second Examination of Plaintiffs........... 9
4. Board of Trade Rule for Substituting Contracts.. 10
5. Second Examination Continued............ 11
6. Defendants' Amended Answer.............. 15
7. The Trial Proceedings..................... 17
8. The Charge to the Jury..................... 22
9. The Exceptions Saved...................... 25

II.

THE ERRORS ASSIGNED............ 26

III.

BRIEF AND ARGUMENT............ 29

1. The Counter Claim was Barred............. 32
2. The Plaintiffs' Right to Recover........... 34
3. The Defense of Discharge by Substitution... 35
4. The Province of the Jury was Invaded...... 40
5. The Defense of Gambling................... 42
6. The Mode of the Business Lawful........... 45
7. Doctrines of Usage and Custom Applicable.. 48
8. Judgment for the Plaintiffs Should be Entered *non obstante veredicto*.................. 51
9. What this Court is Asked to Hold........... 54

IV.

APPENDIX.

1. The Exchange Clearing House............. 57

IN THE
SUPREME COURT OF THE UNITED STATES,

OCTOBER TERM, A. D. 1885.

EDWARD M. HIGGINS AND FRED F. GILBERT, *Plaintiffs in Error*, *vs.* JAMES McCREA, *Defendant in Error.*	*Error to the Eastern Division of the Northern District of Ohio.*

Brief and Argument for Plaintiffs in Error.

By C. C. Bonney.

I.

STATEMENT OF THE CASE.

This was an action to recover $31,644.31, and interest, for losses suffered by the plaintiffs in executing the orders of the defendant for the purchase, in May, 1883, of certain quantities of lard and pork in the Exchange of the Chicago Board of Trade, for delivery in the following August. The plaintiffs in error were plaintiffs below. They are citizens of the State of Illinois, residing at Chicago, and are members of the Board of Trade, engaged in business as commission merchants. The defendant is a citizen of Ohio, residing at Cleveland, and engaged in the business of packing and selling provisions. The defense first set up was that the transactions were mere gambling deals, and by an amended answer the defendant also claimed a discharge by the act of the plaintiffs in substituting subsequent contracts for those originally made.

THE PLEADINGS.

The proceedings were under the Ohio Code. The petition was filed August 10, 1883, and shows the citizenship of the parties; the incorporation of the Chicago Board of Trade under the laws of Illinois; that the transactions were governed by the rules and bylaws of the Board; that the defendant had full knowledge of the existence of the corporation and its rules and by-laws, and that plaintiffs were members thereof.

The petition then shows, as a first cause of action, that May 19, 1883, plaintiffs purchased on the order of defendant and for his account, 1,000 barrels of mess pork, and 1,000 tierces of prime steam lard, to be delivered in August then next, on such day as the vendor might elect. That August 1, 1883, the property was tendered, and payment demanded of plaintiffs; and in accordance with the defendant's instructions, and the terms and conditions of their agency for him, the plaintiffs received the pork and lard, and paid therefor $58,553.34, as the purchase price, and $56 for inspection charges thereon; all which plaintiffs were bound and compelled to do by the terms of the contract, and the rules and regulations of the Board of Trade, which constituted a part of the contract of agency between the parties, and of the contract of purchase. That on the same day notice was given to the defendant that the pork and lard had been received and paid for;

that the same were held subject to his order on payment of the sums advanced; that if not paid for the property would be sold, according to law and the rules of the Board of Trade, and the proceeds applied to his credit, and he held for whatever might be the deficiency on the sale. That the defendant failed to give directions for the disposition of the property, and failed to pay therefor, and plaintiffs thereupon sold the same in the Exchange of the Board of Trade, and received therefor, and credited to the account of the defendant, $42,615.97. That they had previously received from the defendant on that account the sum of $6,631.66, and that the balance due from him and unpaid on account of that transaction was $9,361.71, with interest from the date of sale.

The petition then sets up, as a second cause of action, a like purchase, May 22, 1883, of 2,000 barrels of pork, and 2,000 tierces of lard, for August delivery; and that plaintiffs were compelled to receive and pay for the same August 1, 1883, $119,233.71, together with the inspection charges thereon, amounting to $112; and that the defendant was notified and failed to make payment, whereupon the property was sold, as in the former case, and the proceeds, amounting to $84,250.77, credited to his account, leaving, after deducting certain advances made by him on that account, amounting to $13,263.33, a net balance of $21,832.60, with interest thereon from August 1, 1883.

For a third cause of action the petition sets up a claim for commissions on the transactions, amounting to $450, with interest from the date when the business was closed; and concludes with the usual request, breach, and prayer for judgment for the total above stated, with interest and costs.

The original answer was filed November 12, 1883. It admits the partnership of plaintiffs, and their membership of the Board of Trade. It then sets up that the plaintiffs had, long before the transactions in question, been engaged in the business of conducting for themselves and others gambling and speculative transactions on the Chicago Board of Trade, and that *the defendant, being himself desirous to gamble and speculate on the price of pork and lard, had, on prior occasions, applied to the plaintiffs to buy for him certain quantities thereof for future delivery, with the distinct understanding and agreement of all parties to the transaction, that no pork or lard should be actually delivered;* and that the dates for the delivery of the property had been changed from time to time by the plaintiffs, at his request, until May 12, 1883, when said prior transactions were finally closed by an adjustment of the differences between the price at which the defendant had contracted for the commodities, and the then market price thereof; and that there then remained in the hands of the plaintiffs, to the credit of the defendant on account of said prior transactions, a balance of $1,895.

Defendant then avers that soon thereafter he directed the plaintiffs to continue to deal for him in the same manner, and to buy for his account the pork and lard specified in the petition, and apply thereon said balance of $1,895, as a margin to protect them in the transaction. And that soon thereafter plaintiffs reported that they had made the purchases requested, but *defendant avers that they had not actually purchased any pork or lard on his account. Defendant also avers that the transactions between him and plaintiffs were not with them as agents but as principals.* He also avers that from May 12 to June 15, 1883, he deposited with the plaintiffs as margins upon said deals, $18.000; and in the latter part of June, upon plaintiffs calling upon him for further margins, he expressly notified them that he declined and refused longer to participate further in said gambling transactions, and utterly and entirely repudiated the same, and notified plaintiffs that anything further they did in the matter was done at their peril and expense. *Defendant also denies generally that the plaintiffs purchased any pork or lard, as stated in their petition, or that any was actually delivered to them, or paid for by them; but that the whole transaction was purely speculative and gambling;* and he does not owe plaintiffs anything. And he denies generally all the allegations of the petition not expressly admitted.

Defendant then sets up a counter-claim against the the plaintiffs for $19,895, including the moneys advanced to the plaintiffs on the August purchases, and the $1,895 balance in their hands on the former transaction. *He also avers that the transactions were had in Illinois, and by the statutes of that State he is entitled to recover* such moneys from the plaintiff, and asks judgment accordingly. *This answer is verified by his oath.*

First Examination of Plaintiffs.

January 28, 1884, the defendant, in violation of the law, as declared by this court, in *ex parte* Fisk, 113 U. S. 713, obtained leave of the court below to file interrogatories to the plaintiffs in connection with his answer, and thereby obtain an examination of them upon all the matters involved in the controversy. He accordingly filed some sixty interrogatories, covering all the material matters involved in the case, and many others wholly irrelevant and immaterial.

The anxiety of the plaintiffs to proceed to a recovery of the money they had paid out on the defendant's account, and their consciousness of their perfect uprightness and integrity in the entire transaction, led them to waive that violation of law and of their rights, and to prepare and file, March 14, 1884, in answer to said interrogatories, *a complete and exhaustive exhibit of all their transactions with the defendant,* accompanied by their reply as required by the Ohio Code. *This exhibit thus became a part of the pleadings in the case,* and constitutes an overwhelming demonstration of the absolute justice and legality of the plaintiffs' claim, which no evidence could overcome, and against which no verdict would be permitted to stand.

Regarded as a part of the pleadings, as well as the evidence in the case, those answers are necessarily printed in the record, and therefore need only be briefly epitomized here. They show, among other things, the origin of plaintiffs' business relations with defendant; the manner in which the time for the future delivery of property is changed from one date to another to meet the requirements of the purchaser, according to the rules and regulations of the Board of Trade; the mode in which the business is transacted and the accounts kept; with the details of the various purchases and sales for defendant's account, and such particulars as to exclude the possibility of any fiction or gambling in the transaction, including the delivery notices, warehouse receipts, checks for payments, names and addresses of parties, storage and inspection charges, the exchange forms used, etc. They also show that in sundry prior transactions the plaintiffs actually purchased and shipped to the defendant at Cleveland, twenty car lots of hams, shoulders and ribs, and 150 tierces of hams. This exhibit, than which it is believed none more complete and accurate was ever produced in a court of justice, culminates in the pointing out of an error in the computations amounting to one dollar and thirty-four cents, with the correction of which error the entire accounts balance perfectly. *Those answers closed with a complete and* *comprehensive denial of any purpose or intent to gamble or engage in any fictitious transaction, or any understanding or agreement with the defendant to that effect. On the contrary the plaintiffs aver and testify that all the transactions involved in the controversy were had and made by them in perfect good faith, and in entire conformity with the rules, customs and usages of the Chicago Board of Trade; and that the amount of $31,644.31, for which they sue, is justly due to them, with interest from August 1, 1883.* The bill of exceptions shows that those answers were introduced on the trial.

SECOND EXAMINATION OF PLAINTIFFS.

April 8, 1885, the defendant, having obtained from the court below a refusal to try the action unless the plaintiffs in error would submit to a further examination on oral interrogatories at the pleasure of defendant's counsel, proceeded with such further examination before Commissioner Hoyne at Chicago. The depositions then given by the plaintiffs were introduced in evidence on the trial, and are contained in the bill of exceptions. *They probably constitute a part of the pleadings, as well as the evidence in the case, as being a continuation of the original examination.* They go over all the transactions again in detail. They show that defendant knew no person in the transactions but the plaintiffs, and practically relied upon them, although there were behind them at all times as principals, responsible parties, from whom the property purchased for the defendant was actually coming at the appointed time. In explaining the mode of transacting the business, they say that they purchased in their own names, and that if they had attempted to make the purchases in the name of defendant, they would have been laughed at, meaning that such a peculiarity would be regarded as absurd and ridiculous in view of the established method of transacting business on 'Change. Plaintiffs show that on the maturity of the contracts they would have been compelled to deliver the property to defendant without regard to any failure on the part of their principals, or be expelled from the Board of Trade. *They also explain how commission merchants on the Board of Trade stand in a double relation of principal and agent; or, more strictly, of agent and guarantor. Under the relation of guarantor, which they are compelled to occupy in case of substitution of contracts, they have, for all practical purposes, the responsibility of principals.* Section 6 of rule 26, under which offsets and substitutions are made, is as follows:

The Board of Trade Rule for Substituting Contracts.

"Sec. 6. In case any member of the association, "acting as a commission merchant, shall have made "purchases or sales, by order and for account of "another, whether the party for whom any such "purchase or sale was made shall be a member of "the Board of Trade or otherwise, and it shall subse-"quently appear that such trades may be offset and "settled by other trades made by said commission "merchant, he shall be deemed authorized to make "such offset and settlement, and to substitute some "other person or persons for the one from or to whom "he may have purchased or sold the property origi-"nally: *Provided*, that in case of such substitution "the member or firm making the same shall be held "to guarantee to his or their principal the ultimate "fulfillment of all the contracts made for account of "such principal which have been so transferred, and "shall be held liable to such principal for all damages "or loss resulting from such substitution."

SECOND EXAMINATION CONTINUED.

Plaintiffs testified in great detail, in answer to defendant's counsel, that the original contracts made for the defendant were offset, and other contracts for the same property substituted, in conformity with this rule of the Board of Trade. The plaintiff Gilbert, gives a detailed statement of the method of doing the business, comparing it with elevator transactions, and showing how, on the substitution of one contract for an equivalent one, the difference in the market, if any, is paid and settled, so that *when the original purchaser comes to receive his property, bought for the future delivery, he gets precisely the quantity and the kind he purchased, at precisely the price he agreed to pay;* and that the effects of the substitution upon such purchaser are absolutely immaterial. They do not affect him to the amount of a farthing, nor do the commission men make any profit by the substitution of one contract for another. The benefit of the substitution is in the saving of unnecessary receipts and deliveries, and thereby facilitating business and economizing time, labor and expense. It is not customary to make reports of offsets and substitutions to purchasers, because the purchaser is not in any way affected by them. The property purchased for defendant by plaintiffs was delivered August 1, 1883, not by the original, but by the substituted parties. *The witness shows, in detail, that they were always, from the commencement to the close of the transaction, actually liable for the property purchased for the defendant,* and that the amounts of pork and lard for August delivery, for which they were liable, were in excess of the quantities purchased for defendant. Plaintiffs also show how, on the delivery day, the first property of the requisite kind and quantity received, is applied on the contract of the oldest purchaser. Prior to the

the delivery day, the oldest outstanding purchase stands as substituted for the first purchaser, as was more fully explained in the testimony at the trial. Every day the plaintiffs required their clerk to take off a balance sheet of contracts for future delivery, to show that on the offset and cancellation of any contract, an equivalent contract was substituted for it. The plaintiff Gilbert, not being a lawyer, and not knowing the rule under which a party may bring suit againt a discovered principal, says, in the course of his testimony, that defendant could not have brought suit for the property against any one but plaintiffs; we can see, however, that he shows very clearly by his testimony, at the trial, the particular persons against whom such a suit might have been brought. Mr. Gilbert explains very explicitly the relation of his firm to defendant; that they acted as agents, but were themselves personally responsible for the fulfillment of the contracts under the rule above given. In one aspect they appeared as principals, but in very truth they were agents, guaranteeing performance by the substituted parties. It should be borne in mind that the manner in which the substituted contracts were fixed and made certain in the books of the plaintiffs, is more clearly and explicitly explained in the testimony on the trial, than in the examination now under consideration. The plaintiffs produced their books of account, submitted them to examination by defendant's counsel, and testified in explanation of the various entries made. *The testimony shows, beyond any possible question, that the plaintiffs had actually purchased, and were actually responsible for the quantities of pork and lard ordered by the defendant for delivery in the August following;* and that, whatever may be said in regard to the details of the accounts, there was absolutely nothing on the part of the plaintiffs of a fictitious or fraudulent character in any way connected with the transactions. Plaintiffs say they did not put any mark upon the substituted contracts, but they explained at the trial how substituted contracts "*marked themselves.*" In answer to questions, plaintiffs show that all deliveries are made by warehouse receipt, and not by barrels in wagons. Plaintiffs also show that they were using $150,000 to $200,000 in their business, and had ample means to make the payments required on the delivery of the property, and that the checks given by them were actually paid by the First National Bank. Defendant's counsel again go over the matter of offsetting and canceling the original purchases, and substituting other contracts in their stead, and plaintiff Gilbert testifies, in terms, that *the contract for defendant's account was always alive, although the property was coming from the substituted parties.* The manner of selling a contract for future delivery in a particular month, and purchasing the like amount of property for delivery within some other month which will suit the convenience of the purchaser better, is described.

These depositions show that the plaintiffs had met the defendant on the Chicago Board of Trade, and knew that he had traded there through other houses in former years. They also show that the penalty for making fictitious or gambling contracts, is suspension or expulsion from the board; and that plaintiffs, in case they had been guilty of such dealings with defendant as he sets up in his answer, would have been liable to suspension for the first offense, and to expulsion from the board for the second. *The rule of priority under which the oldest contract in point of time is substituted for the one offset and canceled, is clearly stated in the cross-examination; and it is shown that no special mark or designation in the account is required to effect this substitu-*

tion. It is also to be observed that the plaintiff Gilbert distinctly testifies that the details of substitution and priority of which he testified are according to the customs and usages of the Board of Trade, under their rules, and are not expressed in the rule itself. He says, "All the houses I ever knew always reserved the first stuff coming for the oldest purchaser." The original purchase is indicated by the initials of the purchaser. The headings of the account books are explained.

The deposition of the plaintiff Higgins on the same examination supports the testimony of his co-plaintiff, and shows that the property originally purchased for the defendant was offset, and the equivalent delivered according to the rules of the Board of Trade, particularly Section 6 of rule 26. He says, so far as the particular contract is concerned, the offset is of no effect whatever. It is done merely to facilitate business. This witness also shows, beyond all controversy, that *they were always liable for the property purchased for defendant, from the date of its purchase to the time of its delivery;* and that they had the actual property, actually coming from actual parties for actual delivery, according to the original contract. The original purchase was never offset without having the same amount and quality of property coming from another equally good party. *There was always a double liability in favor of defendant; the liability of the substituted parties, and the liability of the plaintiffs.* Defendant was never notified of the substitutions; such a notice is never given. The witness says that *if defendant had come to Chicago and asked to see from whom the property bought for him was coming, they could have turned over to their books and shown him the parties.* He also states the custom under which the first customer is entitled to the first sale, and the first delivery in point of time, and the application of that rule to the deliveries on the first of August, to fill the purchases for defendant. This witness also had seen defendant in Chicago; had met him on the Board of Trade, and knew that he had dealt with other houses for years.

Defendant's Amended Answer.

Having through his counsel examined the plaintiffs to his heart's content, the defendant obtained from the court below the privilege of amending his sworn answer, and April 23, 1885, filed the same. In this answer he reiterates that the plaintiffs were engaged in the business of conducting for themselves and others, speculative options and gambling transactions in pork and lard, and other commodities, on the Chicago Board of Trade, and *explains the manner in which such transactions are conducted, in a way which shows his own entire familiarity therewith. He also sets up the Illinois Gambling Act. He says that being solicited by the plaintiffs so to do, and being desirous himself to gamble* and speculate on the price of pork and lard, in the manner above described, he engaged with the plaintiffs in such gambling transactions, commencing September 12, 1882, and continued the same down to about May 10, 1883, with the "distinct understanding of all parties that no pork or lard should be actually delivered, but that when the time for delivery came, or before that time, the parties should mutually adjust the difference between the contracts and market price." That after date last mentioned there was a balance to his credit with plaintiffs of $1,895. He then sets up his direction to plaintiffs, May 19, 1883, to continue to deal for him in pork and lard options to the amounts specified in the plaintiffs' petition, and apply the balance in their hands to his credit as a margin. Defendant avers in specific terms that plaintiffs did not actually purchase any pork and lard, nor contract for the actual delivery of any pork and lard whatever; but that the pretended purchases were mere options.

Defendant then avers that although the plaintiffs entered into such nominal contracts as they set up with sundry persons named, he alleges the fact to be that it was the understanding and agreement of all parties to said transactions that no pork or lard should be delivered under said contracts but that the same should be settled upon the differences between the contract and market price, either before or after the first of August, 1883. But he further avers that, after the making of the contract, it became and was *the duty of the plaintiffs, as agents of the defendant, to hold the contracts for his benefit*, and to entirely refrain from using and disposing of them, without his consent; but that they soon afterward, without his knowledge or consent, *sold and disposed of the contracts and converted the proceeds thereof to their own use, and wholly released the parties with whom they had made the contracts*, and that at no time after June 16, 1883, did the plaintiffs hold any contracts whatever for his account. And he says that, although the plaintiffs had sold and disposed of the contracts, they continued falsely to report to him that they were holding and carrying the same for his benefit, and requested and required him from time to time to pay into their hands large sums of money, which he did, to the amount of about $18,000. All such payments he claims were wholly without consideration, and made at plaintiff's request, and upon their false and fraudulent representations that they did hold said contracts for his benefit, when in fact they had released and disposed of the same for their own use. In the latter part of June, 1883, defendant says he notified plaintiffs that he refused longer to participate in said gambling transactions, and utterly repudiated the same. *He also denies that the pork and* *lard mentioned in the petition was paid for by plaintiff's and that any was actually delivered to them August 1st, or at any time for his account.*

He also again sets up his counter claim for recovery of the original balance to his credit, and the money advanced by him on the August purchases, amounting in the aggregate to $19,895. All this he says was paid to plaintiffs for the purpose of promoting and carrying out the gambling transactions; but they did not hold the contracts for his benefit, as they were bound to do as his agents, but disposed of the same and released the parties; by reason whereof the payments were made without consideration, and upon false representations. Defendant distinctly avers that the transactions were had in the city of Chicago, in the State of Illinois, and sets up the Illinois Gambling Statute as entitling him to recover back his advances, for which he prays judgment. *It is to be observed that this amended answer, as well as the original answer, is deliberately verified by the defendant's oath.*

To this amended answer the plaintiffs' answers to interrogatories and reply, were refiled.

The Trial Proceedings.

The case was tried at Cleveland May 4 and 5, 1885, before the Hon. John Baxter, Circuit Judge, and Hon. Martin Welker, District Judge, with a jury. After the pleadings had been read, and the plaintiffs' answers to the defendant's interrogatories introduced, the rules of the Chicago Board of Trade were offered, and so much of them as relate to the questions in controversy admitted in evidence. It was only necessary to introduce into the bill of exceptions Sec. 6 of rule 26, to which reference has heretofore been made.

Thereupon the plaintiff Gilbert was called, and testified as a witness in behalf of himself and his co-partner. He again went over the details of the transaction, and, as a witness may be expected to do when telling the truth, strengthened the case made in his answers to the interrogatories, and in the oral examination before Mr. Hoyne. He identified and read the letters and telegrams relating to the controversy, and explained the meaning of the terms used in the accounts. August lard is lard deliverable at any time the seller may choose in the month of August. A future is property bought for future delivery. Carrying charges consist of interest, insurance, storage, and all other expenses of carrying property from one month to another. He had talked personally with defendant on the floor of the Board of Trade of Chicago. All the particulars of the purchases are contained in the answers to the defendant's interrogatories. *The original contracts were in writing, on what are called check slips, and were produced by the witness. He stated that none of the transactions were made with the intention or understanding that the property was not to be delivered. The witness then proceeded to state again the manner in which the purchases were made, the property received, paid for, resold, and the defendant notified. He also produced the warehouse receipts by means of which the property was delivered, and the checks by which the payments were made;* he also stated the commissions to which the plaintiffs were entitled under the rules of the Board of Trade.

On cross-examination the witness stated that *the property was delivered according to the rules of the board by parties substituted for the original parties whose contracts were offset when the substitution was made. The names of the substituted parties and the amounts of the substituted contracts were given.* The payment of any differences in price at the date of the substitution was explained. The books of account of plaintiffs were produced, and the headings and entries explained. The Chicago Board of Trade is a corporation, with a president and officers. *No contract was ever offset except when there was another to take its place.* The witness speaking of substituted contracts said: "There was no particular mark put on that contract, but the very fact of that contract being open on our books at the time, after we had offset the sales, the contract was marked; the contract marked itself by being open." The witness then explained in detail the rule that the oldest contract open when a prior contract had been offset and canceled, stands as the one substituted for the one discharged, and the supplemental rule that the first property received on a delivery day goes, as a matter of course, to the oldest customer, if there be several who have purchased property for delivery at the same time. This being the third time that this witness explained in detail all the transactions between plaintiffs and defendant, it is not deemed necessary to give a more extended abstract of his testimony at the trial.

Henry D. Gilbert was then called as a witness for plaintiffs, and testified in substance that he was acquainted with defendant, *and had conversed with him about the rules and customs of the Board of Trade; and in a conversation held with him in June, 1883, the defendant said to witness that he, defendant, knew all about the rules of the Board of Trade, and they could not tell him anything about the prices or customs of the board. At another time, in 1880, witness had a conversation with defendant, in which he said he was familiar with the customs of the Board of Trade, and the way business was done in Chicago.*

The letters and telegrams relating to the transaction were then read to the jury. They consist of orders to make the purchases, and questions and answers in relation to the same, and urgent applications on the part of defendant to the plaintiffs not to close out the business for want of the margins for which the plaintiffs were calling to meet a declining market. In answer to a call for $3,000, defendant telegraphs June 16, 1883: "*You must not close deal;* am arranging with bank for money;" and June 19th, "*You must carry my property.*" May 18th defendant writes, "*I am posted*, and if my judgment is to wait my limit, I will do so. I can tell from the ticker whether you fill order or not." June 16th he writes of the excitement consequent on the so-called McGeogh failure, which was then a commercial sensation throughout the country, and after explaining his pecuniary situation, says: "I have plenty of money on my books, coming in from my jobbing trade, and I expect in a day or so, when the excitement is over, the bank will give me money. *In the mean time I shall expect you to hold my property for me, until I can turn myself.* I will deposit money to your credit just as fast as I can get it. I look for a sharp advance in provisions next week."

July 7, defendant writes his first repudiating communication. July 16, he reaches a point where he says in his letter of that date: "*Your reference to carrying property for me you must intend as a joke. You have no property of mine to carry, and never have had, in any of our transactions;* neither have you any legitimate claim upon me for money for which you are pleased to term advances on my property, as I have no property or contracts for property, and there has been and is nothing to make advances upon." July 24th, he writes: "*Our transactions, as you well know, have been mere gambling deals,* and as you have been duly notified, I long since repudiated the same. I again notify you that I will advance no more money for margins, or otherwise, or in any way recognize any pretended contracts we may have made. *All our dealings have been gambling pure and simple,* and as you well know, I long since laid down my hand, and for many weeks have been out of the game."

Letters from plaintiffs to defendant were also read, notifying him that the pork and lard would undoubtedly be delivered August first, and that he must be ready to pay for and receive it, or it would be at once sold under the rules of the board, and he held liable for the deficiency.

The defendant's evidence consisted of his own testimony and of his oral examination of the plaintiffs at Chicago. In his testimony he said, among other things: "At the time I had dealings with Higgins & Gilbert, I had no knowledge of the rules and by-laws of the Board of Trade. I had no knowledge of *the rule* upon the question of the substitution which has been read here. I never stated to H. D. Gilbert that I was acquainted with the rule."

The defendant also testified as follows: *I was acquainted with the manner of dealing.* I had a ticker to give me market quotations. I said to him (H. D. Gilbert) I was posted in the market. I never said I was *familiar* with the rules and customs of the Board of Trade, and I was not. I was only on the Board of Trade once, when I went for money, in February, 1883. *I did not see the rules and by-laws of the board, and I did not hear anybody recite them or say what they were.*

On cross-examination defendant testified that *he commenced dealing on the Chicago Board of Trade about ten years ago, and had kept it up occasionally ever since.* Had been on the board about once in four years, and had dealt with four different parties in such transactions as are involved in this case. He said: "I do not remember when I first learned the meaning of the phrase 'changing deals from one month to another.'

I used that phrase in my letters, and it simply means paying the difference—the premiums from month to month—as I understand it. When I wrote the letter to Higgins & Gilbert, and said 'You must carry my property,' I meant the deal." Witness then testifies, in some detail, that he always knew the transaction was gambling; that he never bought any property for future delivery and received it, or expected to. He admits that he had sent pork of his own packing to New York for future delivery. Being asked to explain what he meant by his inquiry in the telegram to Higgins & Gilbert, whether they think deliveries will be large, defendant says that he understands that a delivery and a settlement are the same thing. Being asked what right he has when he makes a contract to change it, defendant answers, "Well, that is a custom. For instance, if I can not make money—the market has not gone in my favor, and I can not make money for January—I will tell them to change to March; if I can not make money in March, I will tell them to change to June: that is the way I have dealt." Being asked what object he had in asking plaintiffs to carry his property at that time, he answers, "Thinking that perhaps I might win." Being asked when he first made up his mind to take the position assumed in his letter of July 7, defendant answers, "I do not remember."

A statement of the essential points of the oral examination of the plaintiffs has already been given.

The Charge to the Jury.

The evidence being concluded, and the case having been argued on the questions of law involved, to the court, and on the questions of fact raised, to the jury, the court, by Baxter, Circuit Judge, proceeded to deliver the charge. Pursuant to the rules and decisions of this court, only so much of the charge is contained in the bill of exceptions as was deemed essential for the purposes of review in this court. That portion of the charge, with the specific exceptions taken thereto, is in *totidem verbis*, as follows, to-wit:

"And be it also remembered, that on the trial of " this cause, the plaintiffs by their counsel requested " the court to charge the jury as follows:

" 1. That the question whether there had been a " compliance, by the plaintiffs, with the rules of the " Chicago Board of Trade, regulating offsets, and the " substitution of parties, was a question of fact to be " found by the jury, according to the evidence. But " the court, in view of the charge actually given and " to be hereafter shown, made no specific response to " said request. The court explained what would and " what would not constitute a gambling contract, to " which no exceptions were taken, and then said " among other things not excepted to:

" It is legitimate for the parties to make a contract " for the delivery of property at some future period, " provided they mean a real and *bona fide* contract, " and the law recognizes the obligation and will enforce it. If the contract is void for the reason heretofore stated, the plaintiffs can not recover anything, " nor could the defendant recover on his cross-action. " The law in that contingency would leave the parties " in the situation that they have placed themselves in, " and no recovery could be had by either plaintiffs or " defendant. *But if you should be of opinion that although the defendant entertained the opinion that it was " a gambling transaction, the plaintiffs did not participate " in that view of the question, but contemplated and intended an actual purchase and an actual sale, the contract would be binding between the parties, it will become " your duty to go further and make an additional finding.*

" Assuming that this contract was valid and enforcible, the defendant says that he is not bound, for the "reason that after the purchases were made by these "plaintiffs as his agents, and for his account, they "canceled the contracts and released the vendors "therefrom, and that they did that without authority "from him, and without his knowledge or subsequent "ratification. Upon that state of facts, if found to be "true, the plaintiffs could not recover anything; that "cancellation of the contracts and release of the vendors "would have absolved the defendant from any "obligations to pay the plaintiffs for the property so "purchased by them for his account.

"But the plaintiffs in reply say, that the Board of "Trade has certain rules and regulations, which the "court has permitted to be offered in evidence to you, "and that under and in accordance with these rules "they had a right to cancel these contracts and substitute others in the place of them; that these rules "were known to and understood by the defendant, "and that he, with that knowledge, acquiesced in the "cancellation of the contracts, and the alleged substitution of others in the place of those canceled; "for present purposes and without expressing any "opinion upon this proposition, the court instructs "you that you may, for the purposes of this case, assume that the defendant did know and did consent "that these plaintiffs might act under the 6th section "of the 26th rule, and that such knowledge and acquiescence of his, authorized the plaintiffs to cancel "the first contracts and substitute others in their "place.

"*But the court instructs you, that assuming plaintiffs' contention in this regard to be true, and assuming "that the plaintiffs themselves have told the truth in this "case, there has been no valid substitution of other con-*

" *tracts for those that were canceled, and that the plaintiffs can not, therefore, for that reason, upon their own testimony, recover anything in this action. If you find upon that question the original contract to have been valid, and that the defendant is excused or absolved from liability because of this attempted substitution, which the court instructs you was not made in accordance with said rule, then, and in that case, the defendant will be entitled to recover upon his cross-action against the plaintiffs for all the moneys which he advanced in pursuance of these contracts.*"

"This charge, upon the request of the jury for further instructions, was substantially repeated to them.

The Exceptions Saved.

"*And the plaintiffs then and there excepted to the charge of the court in the following particulars,* to wit:

"1. It allows the defendant to recover, notwithstanding his confession of record that he intended to gamble.

"2. It allows the defendant to recover in virtue of plaintiffs' innocence, by giving the defendant a verdict for what he says were gambling advances.

"3. It takes from the jury the pure question of fact whether the plaintiffs substituted other contracts for those canceled by offsets, and usurps the province of the jury by assuming to find that fact for them, and to make it a bar to plaintiffs' claim, whereas the jury had a right to find that fact the other way, and to bind and conclude the court by such finding.

"4. It instructs the jury, in effect, that they may base their verdict upon either of two inconsistent positions taken by the defendant in his amended answer and counter-claim, instead of directing the "jury that the defendant must elect to take one of "the two positions.

"5. It directs the jury with respect to a finding of "fact upon which there is conflicting testimony.

"6. There being no proof of any damage suffered "by the defendant by reason of the acts or omissions "of the plaintiffs complained of, it directs the jury "that in the event that they find the transactions to "be other than gambling transactions, they must render a verdict for the defendant on his counter-claim, "in the amount of the moneys advanced to the plaintiffs."

II.

THE ERRORS ASSIGNED.

Omitting the formal caption, the following are the errors assigned, with the prayer for reversal, and direction to the court below:

1. That upon the trial of this cause said Circuit Court withdrew from the jury the question of fact whether the plaintiffs in error, who were also the plaintiffs in the court below, had or had not complied with the rules, usages and customs of the Chicago Board of Trade in the transactions which were and are in controversy in this cause; and that thereupon said Circuit Court decided said question of fact against said plaintiffs, and charged the jury that they were bound by said decision; whereas it was the duty of said court to leave the decision of said question wholly to said jury.

2. And that upon said trial said Circuit Court charged the jury in substance that certain substitutions of contracts which were and are in controversy in this cause, were not, as a matter of law, made in accordance with the rules of said Board of Trade;

whereas it was the duty of said court to leave said question to said jury, and the right and privilege of said plaintiffs to have said jury find the question involved, as a matter of fact.

3. And that said court also charged said jury in substance, that if they should believe from the evidence that the transactions of the plaintiffs involved in the case were had and made in good faith, and without any intent on their part to engage in gambling, then and in that case the defendant would be entitled to recover, upon his cross-action against the plaintiffs, the amount of money which he had advanced in the course of the transactions; whereas said defendant had, by his averments in his answer and by his testimony upon the trial, that his intent and purpose was to gamble and not to conduct honest and *bona fide* transactions, wholly and absolutely barred himself from having or recovering the amount of his said claim or any part thereof.

4. And that the said Circuit Court, in its charge to said jury, assumed to direct and conclude them in respect of divers matters in regard to which there was a conflict of evidence; whereas all such matters should have been left to said jury, to be found by them according to their own opinion and judgment of the weight of the testimony, and the credibility of the witnesses.

5. And that said Circuit Court charged said jury in substance, and to the effect, that *a mere alleged irregularity*, which was denied by the plaintiffs, and upon which they had the right to have the finding of the jury, in the matter of conducting the transactions involved in the suit, was sufficient in law to bar their claim for the amount of money actually lost by them in the conduct of the business directed by the defendant; and that such *alleged irregularity* was also a sufficient ground to entitle the defendant to recover the ad-

vances he had made in the course of the business; whereas said Circuit Court should have charged the exact contrary, and should have told said jury, that if they believed from the evidence that the plaintiffs had in good faith substantially complied with the directions received from the defendant, and had conducted the business without fraud, they were entitled to recover.

6. And that, the jury having found in effect that the transactions of the plaintiffs were conducted in good faith, the said Circuit Court should have rendered judgment in favor of said plaintiffs, notwithstanding the form of the verdict was, under the direction of the court, in favor of the defendant.

7. And that said court did not charge said jury, as it was the manifest duty of the court to do, that there was no evidence in the case tending to show that the defendant had suffered any damage, injury or loss, by reason of the alleged irregularity in the manner in which the plaintiffs substituted the contracts under the rules of the Board of Trade, in the course of the business in controversy.

8. And that, notwithstanding the errors aforesaid, the said Circuit Court rendered judgment on the verdict of the jury, against said plaintiffs and in favor of said defendant.

9. And that said proceedings and judgment are in many other minor and incidental respects manifestly informal, insufficient, irregular and contrary to law, in divers particulars, which will be specified in the argument of this cause in said Supreme Court.

All which errors were committed against the objection and exception of the plaintiffs, duly made and saved.

Wherefore the said plaintiffs in error pray that the said Supreme Court of the United States will proceed and consider the proceedings and judgment aforesaid, and particularly the matters aforesaid above assigned for error. And that thereupon the judgment aforesaid may for the errors aforesaid, respectively, be annulled, reversed and altogether made as nothing; *and that the said Circuit Court may be directed to enter judgment upon the record aforesaid in favor of said plaintiffs and against said defendant for the amount which said record shows to be their due, etc.;* and that said plaintiffs may be restored to all things which they have lost by reason of said errors and judgment, and that they may have and recover their costs and charges in this behalf most wrongfully sustained, etc.

III.

BRIEF AND ARGUMENT.

MAY IT PLEASE THE COURT:

I respectfully submit that a mere statement of this case should entitle the plaintiffs to a reversal of the judgment of the court below. Extended argument surely can not be necessary to show that the question whether the manner in which the plaintiffs had transacted the business in controversy was in conformity to the rules, usages and customs, that is to say, the established modes of doing business in the exchange of the Chicago Board of Trade, is a question for the jury, and not a question for the court.

It surely can not be necessary to argue at length the proposition, that a party to a proceeding in a court of justice, who has deliberately and repeatedly put himself upon the record as a violator of the law and public policy, is barred by his confession from any recovery in that proceeding. Much less can it be necessary to produce precedent and authority to show that one who is confessedly guilty, can not be allowed in a court of justice to recover the fruits and reward of his iniquity, by virtue of the innocence and good faith of the person whom he has victimized.

It surely can not be necessary in this court to contend at length that any act or omission that has not wrought any substantial injury or loss to a defendant, can not constitute a bar to a recovery by a plaintiff for money which he has actually paid out at the request of the defendant, in substantial compliance with the established rules and usages of the business.

This case well illustrates the great wrongs sometimes perpetrated in the name of right, and under the forms of law. I have no doubt that the learned justices who sat at the trial on the circuit, believed that in their charge to the jury they were obeying the requirements of the law. I make no impeachment of their general learning, ability or motives, but I do insist that the practical result of their rulings is a striking exhibition of that amazing perversity of the human reason, under the influence of which, as history abundantly shows, the most grievous wrongs may be committed from a sense of duty, and in the name of justice.

The judgment below is assumed to rest upon the common law of contracts, trade and agency. But it violates those foundation rules of the common law, that when the reason of a rule ceases, the rule itself becomes inoperative; and that when new conditions arise, the law readily adapts itself to them. Admitting the perfect honesty and fairness of the plaintiffs' transactions, and, indeed, upon the theory that their conduct has been above reproach, the court below proceeded deliberately to deprive them of more than fifty thousand dollars of actual money which they have disbursed; and in effect, to transfer that sum of money to the defendant, who declares in his pleadings and in his testimony, that throughout all the business he intended only to violate the law against gambling in commercial transactions. The court not only protects him against the claim of the plaintiffs for more than $30,000 actually advanced in his behalf, but to crown the astounding injustice of the proceeding, actually gives judgment in his favor, against the plaintiffs, for the return of the money which he had advanced with the purpose of gambling, but which they received in absolute ignorance of that purpose, and in the most perfect innocence and good faith, and applied in the course of the business according to the established usages relating to it. The bare facts in this case are so extraordinary that an advocate who appeals to this court for justice, may well hesitate in choosing the words he shall use, with a consciousness that any words he may select are inadequate to the purpose.

The only consolation which attends the appeal, is the fact that such cases as this, which shock the moral sense, not only of bench and bar, but of the people who are indirectly affected by the judgment, may prompt the great tribunal of last resort not only to give relief to the persons immediately concerned, but also to assert and establish more firmly the principles of justice that have been invaded, and advance new lines of protection and additional safe-guards to prevent the recurrence of such wrongs. In such cases there is needed, as well the hammer of Thor to break down the obsolete principle or precedent by which the injustice has been wrought, as the hand of the master builder to advance the ever-uprising fortress of jurisprudence, that its protection may henceforth be more sure. A judgment like that of the Circuit Court is a great injury, not merely to the parties whose interests are immediately involved, but also to the cause of justice throughout the country. Widely known through the public press, and earnestly discussed by those whose interests are indirectly affected, a charge like that of the court below, with the resulting judgment, excites an amount of distrust, suspicion and indignation over the mal-administration of justice, that is not easily removed. Indirectly, this case affects the interests of many thousands of persons, and touches, with its malign influence, transactions involving many millions of dollars.

As the plaintiffs seek, not only a reversal of the judgment below, but in addition thereto an order for the entry of judgment in their favor for the amount of their claim, upon the ground that the whole record clearly shows that there is no need of further litigation, the presentation of their case will take a wider range than though they merely sought the privilege of renewing the litigation in the court below, under an award of a *venire de novo.*

Let us now proceed to consider the principal questions in the case.

1. THE COUNTER CLAIM ON WHICH THE COURT COMPELLED A VERDICT FOR DEFENDANT, WAS WHOLLY BARRED.

a. It was barred by his confession of record in his answers, and in his testimony which has become a matter of record by the bill of exceptions, that he was engaged in a willful and persistent attempt to violate the law against gambling, and that all his acts in the transactions in controversy in this suit, were with the intent and purpose of such violation. It would be strange, indeed, if one who stands in a court of justice with such a confession on his lips, could be heard with favor. It would be passing strange if he could obtain, not only a favorable hearing, but abundant relief to his utmost asking. But the contrary is so well and has been so long established, that we do not search the reports for cases in its support, but rest upon those ancient maxims of the law in which its essential spirit and genius is tersely expressed. *Commodum ex injuria sua non habere debet.* Jenkins' Centuries, 161. No one should be benefited by his own wrong.

b. The defendant's counter-claim is also barred by his voluntary payment of the money to the plaintiffs, and their actual disbursement and application of it in pursuance of his orders. He sent the money to them for a particular purpose. They so far applied it to that purpose—they so far obeyed his requests and directions, that in case he is allowed to recover back the money he sent them, they actually lose the entire amount. This fact may well be deemed a decisive test. At the special instance and request of the defendant, the plaintiffs entered into such contracts and undertakings that the payment of the money received from him was with them not voluntary, but compulsory. Whether they pursued a direct or a circuitous route to the end intended is not material, if all the substantial requirements of the matter were observed.

c. The counter-claim is also barred by the contract between the parties, which stands unimpeached so far as the plaintiffs are concerned. The attempt of the defendant to impeach it has proved an utter failure. His conflicting endeavors to that end oppose and defeat each other. His answer and amended answer are both verified by his oath, but they contain statements which can not be reconciled, as is shown in the abstract of them which is given in the statement of the case. The most important and material statements of his answers are flatly contradicted by his letters and his telegrams, and by the evidence produced by the plaintiffs. And it is to be especially observed, that his amended answer was put in after the plaintiffs had been examined at length, and had exhibited their books of account, and the purchase tickets, delivery notices, warehouse receipts, checks, and so forth, which demonstrate the simple and unqualified falsity of the statements made by the defendant as of his own knowledge, that all the transactions were fictitious, and that no actual purchases, deliveries and sales had been made.

The filing of his amended answer does not prevent the use against the defendant of the original. Both may be used.

Cook v. *Barr*, 44 N. Y. 156–158.
Strong v. *Dwight*, 11 Abb. N. S. 324.

The testimony of a party in his own behalf is entitled to no consideration, if it is flatly contradicted by his own writings. This rule is exactly met by the testimony of the defendant, in flat contradiction of his letters and telegrams to the plaintiffs. The testimony of the plaintiffs and of the witness H. D. Gilbert, is in perfect harmony with the letters and telegrams of the defendant, as well as with every fact in the plaintiffs' case.

Boyd v. *Colt*, 20 How. Pr. 384.

2. THE RIGHT OF THE PLAINTIFFS TO RECOVER IS CONCLUSIVELY ESTABLISHED.

a. The defendant elected to make the plaintiffs his own witnesses. He is accordingly bound by their testimony, and estopped to question their credibility. This is familiar law. But to illustrate the striking manner in which evil intentions overleap their purpose and defeat themselves, the defendant was not content merely to make the plaintiffs his witnesses; he insisted on making their testimony, and the most complete and exhaustive exhibit of their case which could be made, a part of the pleadings, and so a conclusive matter of record, establishing their right to recover, and barring his counter-claim. The exhibit made by the plaintiffs in their answers to defendant's interrogatories, excludes the possibility of anything fictitious in connection with the transactions. It does not merely create a strong probability that the plaintiffs were in the right; it establishes the justice and legality of their demand within that old rule of pleading known as "certainty to every intent and particular." Rarely, indeed, is evidence so convincing produced in any contested and complicated case.

b. And so far as the weight of the evidence is concerned, it may safely be said that it is so overwhelmingly in favor of the plaintiffs' case, that any verdict against it should be instantly set aside by the court, as, "at first blush wholly wrong and shocking to the sensibilities of enlightened conscience." Three several times the plaintiffs underwent the most thorough and exhaustive examination of the transactions in controversy. All the books and papers which could throw any light upon the subject were produced and examined, but nothing was discovered to impeach the perfect integrity and fairness of the plaintiffs' conduct throughout the entire business. No scheme or device to make a farthing of dishonest gain was disclosed or even suggested. Their transactions were straightforward and according to the established methods of business. They stand wholly free from evil intent, as well as from unlawful act.

3. THE DEFENSE OF DISCHARGE BY SUBSTITUTION IS UNTRUE IN POINT OF FACT, AND UTTERLY IMMATERIAL IN MATTER OF LAW.

a. The plaintiffs show an exact and literal compliance with the established usage of the trade in the market where the business was to be conducted. The fact that there was something in the nature of a substitution of contracts—something which was intended to be such—is established beyond controversy. The objection necessarily is, not that there was no attempted substitution, but that the substitution was ineffectual to bind the defendant. That is, the objection lies not to the fact, but to the manner of executing the fact. In other words, it is a question of *regularity*. A question of *manner*. Not of *what* was done, but *how* it was done. But it must be an extraordinary case in trade or commerce, where *manner* becomes vital, and *substance* is only secondary. The trade of a country has little time for matters of method. Its object is results. In the old story of the farmers who took their wheat to Albany for a market, the purchaser did not ask them which road they came, but "Is your wheat good?" So the purchaser of grain in the Chicago or any other market, does not inquire from whom the property was obtained, or by what route, direct or circuitous, it came; but he does ask, and he has a right to inquire, whether it is of the quality and price of his purchase.

b. It is the first axiom of geometry, that things which are equal to the same thing are equal to each other. It is a maxim of common sense in every day business that there is no substantial difference between things of equivalent kind, quality and price. It is an established rule of law that no one can recover damages for any act or omission from which there is no resulting injury or loss; and an established rule of all courts of review, that no one can be allowed to complain of an error that has done him no harm; for the law regards substance, and not mere form. Nor can any recovery be had, except where the damages claimed were the natural and proximate result of the act or omission of which complaint is made.

Thacher's S. C. Digest, 151, No. 820,821.
Bouvier L. D., Title, "Damages."

Now in the present case it is simply certain, that the supposed irregularity in the manner in which the plaintiffs substituted the later contracts for those originally made on account of the defendant, did not result in any conceivable damage, injury, or loss to him. And it is also perfectly clear from the evidence that the substitutions were in fact made in pursuance of the rule of the Board of Trade, as that rule was understood and applied by the members of the board in the course of their daily transactions.

c. But let us suppose, for the sake of the argument, that the peculiar manner in which the subordinate details of the substitution were carried out was not in precise conformity to the best and wisest construction and interpretation of the rule. If that were so, which is denied, the fact would be absolutely immaterial to the merits of the case, unless the defendant has shown that by reason of the particular non-conformity to the peculiar requirement of the rule or practice, he suffered some natural and proximate damage. But there is not, and on the evidence in this record there can not possibly be a reasonable pretense of any such thing. The identical property which the defendant ordered the plaintiffs to purchase was received by them on the day when the delivery was due. They were compelled to receive it and pay for it on that day. They did so receive and pay for it. They notified the defendant, and on his default re-sold the property at the full market price, and charged him the deficiency which arose through a declining market, from the date of the purchases down to the date of the delivery and re-sale.

The plaintiffs followed the contemporaneous construction of the rule by the body which made it. The usage and practice which grow up under a rule, become, to all intents and purposes, a part of the rule itself. Indeed they are the rule; and it is old law that although a court of justice may see that some other practice or usage would have been in more strict conformity to the language of the rule, and that if the matter had in the first instance been submitted to the court for interpretation, it would have given a different construction to it, still, when by contemporaneous construction a settled method and course of action has been established, the court will not disturb it, but will sustain and enforce it, as required by that broad and general public policy which is the foundation of the entire system of laws.

d. But more than this. The defendant in his answer avers and swears that he dealt with the plaintiffs as principals, and not as agents. It is true that he makes various conflicting and contradictory statements; but each one, in its own aspect and relation, is evidence against him. Hence, having taken that position, it becomes entirely immaterial to him whether any substitutions of contract were made by the plaintiffs or not. If they were his principals, their substitutions of contracts were merely the means by which they were provided with what they had contracted to deliver to him in the following August. He insists that they were always liable to him directly as principals. They also insist and testify that they were always liable to him, but as guarantors of the substituted contracts; and that he looked only to them, because he had never asked, nor otherwise learned the names of the parties with whom they had contracted for the property he ordered. Those parties, as we also know, were also liable, and if occasion had arisen, might, on discovery, have been held answerable under the familiar doctrine of principal and agent.

As a matter of fact, nearly all the losses suffered by the plaintiffs had occurred before the defendant repudiated his contract with them. Had the repudiation come when the losses were small, the plaintiffs would have protected themselves against further loss by a re-sale without delay, under another rule, applicable to such cases. But it was too late. The losses had become so great that it was deemed more advisable to let the contract complete its course, and then seek such remedy as the law might afford them. Had they taken the other course, we should see this same defendant in court with another defense, equally abhorrent to justice and the law of the case, but less easy of explanation and vindication to the ordinary jury.

It is therefore plain that in the charge and judgment of the court below the substantial justice of the case was sacrificed to a supposed technicality in the application of a rule of the grain trade. An obsolete principle of the old common law of contracts was upheld at the sacrifice of a new and living principle of the same origin, character and authority, which is of vital importance to the business transactions of the present day.

It is particularly to be observed, that nowhere in the record is there any attempt to point out wherein the substitution of contracts was defective. That vital matter is left to inference. The court does not attempt the task in its charge. Neither the defendant nor his learned counsel made any specification of the particular points wherein the rules of the Board of Trade were violated. We have simply the assertion of the defendant in his answer, and of the court in its charge, that the substitutions were not, as a matter of law, in conformity with the rule of the Board of Trade. But general objections are not tolerated in any court. They are mere nullities if they be not specific. Judicial judgment rests not on "glittering generalities." but on specific points of well defined fact. Hence for this reason, as well as for the others above stated, the point of defense on which, as the record shows, alone the plaintiffs failed, and on which, as the record also shows, alone the defendant recovered, is, in judgment of law, a mere nullity. That is to say, the plaintiffs have been denied a recovery of more than thirty thousand dollars, and the defendant has been allowed a recovery of more than twenty thousand dollars, upon a point which is so absolutely inconsequential in a legal point of view, that it would not be tolerated as a ground for striking out an answer to a question in a deposition: for a motion to strike out an answer must always show wherein the answer is alleged to be improper. But we look in vain through this entire record to find any specification of the exact point wherein it is contended that the substitutions of contracts made by the plaintiffs, in the course of the business in controversy, were in violation of the rules, usages, customs or practices of the Chicago Board of Trade, or any rule of law, statutory or judicial.

4. THE PROVINCE OF THE JURY WAS INVADED.

This is so obvious that I do not see how the contrary can well be contended, for certainly it has many times been decided by this and other courts that just what the court below did in the present case is a violation of that settled rule of law which confines the court to the law, and the jury to the facts of the case. But in compliance with the practice I submit the following authorities in support of the proposition that the charge of the court below was such an invasion of the province of the jury that the judgment should be reversed upon that ground.

a. Although it is the province of the court to construe written instruments, yet where the effect of such instruments depends not merely on the construction and meaning of the instrument, but upon collateral facts *in pais*, and extrinsic circumstances, *the inferences of fact to be drawn from them* are to be left to the jury.

Etting v. *Bank of United States*, 11 Wheat. 59, 76. Feb., 1826.

b. Whenever evidence is offered to the jury, which is in its nature *prima facia* proof, or presumptive proof, its character, as such, ought not to be disregarded; and no court has a right to direct the jury to disregard it, *or to view it under a different aspect from that in which it is actually presented to them.* Whatever just influence it may derive from that character, the jury have a right to give it; and in regard to the order in which they shall consider the evidence in a cause, and *the manner in which they shall weigh it*, the law has submitted it to them to decide for themselves; and any interference with this right would be an invasion of their privilege to respond to matters of fact: *Crane* v. *Lessee of Morris*, 6 Pet. 598, 617, 621.

c. *Whether an advertisement of sale was such as the law required, is a mixed question of law and fact, and it must be submitted to the jury:* *Cooley* v. *O'Connor*, 12 Wall. 391, 399, 400, Dec., 1870.

d. Assuming the representations of the agent of a company, as to a non-assessment of the stock, to be a fraud which would avoid the contracts, the question arises, *whether the defendant discharged his duty* in discovering the fraud, and repudiating the contract on that account, and not on account of another fraud not in issue. Held, that *the plaintiff was entitled to the opinion of the jury on that precise question.*

Upton v. *Tribilcock*, 1 Otto, 45, 53, Oct. 1875.

e. The question whether an imported article is or is not known in commerce by the word or terms used in the act imposing the duty, is one of fact for the jury, not of construction for the court.

Tyng v. *Grinnell*, 2 Otto, 467, Oct. 1875.

f. Where the burden of proof of certain specific defenses set up by the defendant is on him, and the evidence presents contested facts, an absolute direction from the court that the matters produced and read in evidence on the part of the defendant were sufficient in law to maintain the issue on his part, and that the jury ought to render their verdict in favor of the defendant, is erroneous; and a judgment rendered upon a verdict purporting to have been given under such a charge, will be reversed, etc.

United States v. *Tillotson*, 12 Wheat. 180, 181, 183, Jan. 1827.

g. See, also, Thompson on Charging the Jury, Secs. 42. 47, 60.

Abbott's Trial Brief, 149, Sec. 17.

So in this case, the plaintiffs were entitled to the opinion of the jury on the exact questions whether they had discharged their duty, and whether their substitutions of contracts were properly made.

5. GAMBLING CONTRACTS.

The Illinois statute provides that, "whoever contracts to have, or give to himself or another, the option to sell or buy, at a future time, any grain, or other commodity, stock of any railroad or other company, or gold; or forestalls the market by spreading false rumors to influence the price of commodities therein, or corners the market, or attempts to do so, in relation to any such commodities, shall be fined not less than $10 nor more than $1,000, or confined in the county jail not exeeeding one year, or both; and all contracts made in violation of this section shall be considered gambling contracts, and shall be void."

Ill. Rev. Stat., Chap. 38, Sec. 130.

The word "option," as used in the statute, taken with the context, means a mere choice, right or privilege of selling or buying; and it is the contracting for such choice, right or privilege of selling or buying, at a future time, any commodity, the statute was intended to prohibit, as contradistinguished from an actual sale or purchase, with the intention of delivering and accepting the commodity specified. The statute was passed from motives of public good, and to repress evil. Hence, it follows from established rules of law, and their analogies, in such cases, that no matter what form the transaction bears, as to the terms of the contract, still, if such form be colorable only, and the real intention of the parties be that there is to be no sale of the article—no delivery or acceptance of it—but the transaction to be adjusted only upon differences, it is a gambling transaction, within the statute.

Tenney v. *Foote*, 4 Bradw. (Ill.) 594.

The Illinois statute (Rev. Stat. Chap. 38, Sec. 130) was not intended to prohibit sales of grain or other commodities for future delivery, where the seller reserves to himself a simple option as to the time of delivery within certain limits.

Gilbert v. *Gaugar*, 8 Biss. (U. S. C. Ct.) 214.

If one makes a contract to deliver grain during a future month at a fixed price, and, by reason of the adverse aspect of the market directs his broker to settle with the purchasers before the maturity of the contract, this does not make the contract void as a gambling transaction, and he is liable for the differences paid by the brokers in his behalf, as well as for their commissions.

Ibid.

Ashton v. *Dakin*, 4 Hurl. & Nor. (Eng.) 867.

What the law prohibits, and what is deemed detrimental to the public interests, is speculation in differences in market values, called, perhaps, in the peculiar language of the dealers, "puts" and "calls," which simply means a privilege to deliver or receive the grain or not, at the seller's or buyer's option. It is against such fictitious, gambling transactions, the penalties of the law are levied. But time contracts, made in good faith, for the future delivery of grain or any other commodity (where the only option the seller has is as to the time of delivery) are not prohibited by the common law, nor any statute of this State, nor by any policy beneficial to the public welfare.

Wolcott et al. v. *Heath*, 78 Ill. 433.

Webster v. *Sturges*, 7 Brad. 560.

See also, *ex parte Young*, 6 Biss. (U. S. Cir. Ct.), 53.

The intention of the parties gives character to the transaction, and if either party contracted in good faith, he is entitled to the benefit of his contract, no matter what may have been the secret intention or purpose of the other party. Although one of the parties may intend a gambling transaction, this will in no wise affect the other party, if he did not join in that intention. The innocent party will be protected, and may enforce the contract.

Pixley et al. v. *Boynton et al.*, 79 Ill. 351.

Williams v. *Tiedemann*, 6 Mo. App. 269.

Smith v. *Roundtree*, 108 U. S. 269.

The statute does not prohibit a party from selling or buying grain for future delivery; such was not the purpose of the statute; nor can it make any difference as to the legality of the contract, whether the party who sells for future delivery, at the time the sale is made, has on hand the grain; a party may sell to-day a certain quantity of grain for delivery in a week or a month hence, and then go upon the market and buy the grain to fill the contract. It is true, the defendant had the option, under the contract, to select a day within a limited time on which he would receive the grain, but such an option does not fall within the statute, for the reason that it does not render the sale optional.

Logan v. *Musick, et al.*, 81 Ill. 419.
Cole v. *Milmine*, 88 do. 349.

In the light of these authorities it is perfectly clear from the evidence preserved in the record, that, though the defendant, as a self-confessed gambler, has no rights growing out of the transactions in controversy which a court of justice is bound to respect, nevertheless the plaintiffs, having acted uprightly and in conformity to law, may enforce their contract with the defendant, and are entitled to recover, according to their petition.

6. THE MODE IN WHICH THE BUSINESS WAS DONE IS ESTABLISHED AND LAWFUL.

That the mode in which the business is transacted in the exchange of the Chicago Board of Trade is well established, and has received such frequent and decisive judicial sanctions as now to entitle it to recognition at the hands of this court, is abundantly established by the adjudged cases.

It is not necessary that property sold for future delivery should be in the possession of the vendor at the time of the sale. A sale of property for future delivery is valid, both in law and morals. The vendor, in a sale for future delivery, may properly make subsequent purchases to comply with his contract. An option to select a particular day within a given month for delivery is lawful.

Sanborn v. *Benedict*, 78 Ill. 310.
Pickering v. *Cease*, 79 Ill. 329.
Logan v. *Musick*, 81 Ill. 419.
Cole v. *Milmine*, 88 Ill. 349.

The Supreme Court of Illinois says: A person who deals in a particular market must be taken to deal according to the known, general and uniform custom or usage of that market; and he who employs another to act for him at a particular place or market, must be taken as intending that the business to be done will be done according to the usage or custom of that place or market, whether the principal in fact knew of the usage or custom or not.

Under the custom among commission merchants in Chicago, when grain is consigned to them, they may dispose of the warehouse receipt given them for the same, although directed by the consignor not to sell, but to hold the grain for future orders, if they keep on hand ready for delivery when called on, other receipts for a like quantity and grade of grain. The receipts are not the consignor's property, and do not represent his property, but are merely evidences of a debt to the consignee.

Bailey v. *Bensley*, 87 Ill. 556.

While a repudiation of the contract by the vendee authorizes the vendor to treat the sale as rescinded, it can not compel him to do so. The vendor must have the right, at his option, either to affirm or disaffirm the contract under such circumstances. If he elect to affirm it, he may proceed to compel performance on the part of the vendee. The vendor may use subsequently acquired warehouse receipts in tender of the property purchased.

Kadish v. *Young*, 108 Ill. 170.
Follansbee v. *Adams*, 86 Ill. 13.

It is not an option to select a particular day in a given month for the delivery of property purchased, which is illegal, but a mere bet on the rise or fall of prices, commonly called a put or call, which is a privilege of delivering or calling for the specified property or not, at the option of the person purchasing the "put" or "call."

Pixley v. *Boynton*, 79 Ill. 35.
Clark v. *Foss*, 7 Biss. 540, 558.

Offsets, substitutions, and ring settlements, so called, of commercial contracts, have been so often judicially explained, sanctioned and upheld, that it would seem the time has come to recognize them without discussion or production of authority.

Clark v. *Foss*, 7 Biss. 540, 558.
Gilbert v. *Granger*, 8 Biss. 214.
Williar v. *Irwin*, 11 Biss. 57; 110 U. S. 499.
Oldershaw v. *Knoles*, 4 Brad. 63; 6 Brad. 325.

7. THE GENERAL DOCTRINES OF USAGE AND CUSTOM APPLICABLE TO THE CASE.

A brief consideration of the general doctrines of usage and custom applicable to the case may not be inappropriate. It is not deemed necessary to cite authorities on this subject at any length. They are well collected for all the purposes of the present case in Lawson on Usages and Customs, to which reference will be made without a display of the numerous cases to which the learned author refers on the points cited.

A particular custom need only be "established." A usage of trade need not be ancient. Sec. 8.

Those who send goods to a market where certain customs prevail, are presumed to know the customs and to act upon them. So, also, one who sends to a distant market to purchase goods, must be presumed to intend to purchase according to the usages and customs of that market. Sec. 20.

All trades have their usages, and when a contract is made with a man about the business of his craft, it is framed on the basis of its usage, which becomes a part of it, except when its place is occupied by particular stipulations. And it has been held that it is not material to show, in addition to the existence of the usage, that the party to be affected by it had express notice of it. Sec. 24.

In this connection, one aspect of *Williar* v. *Irwin*, may be noticed. It is there said that there should have been some evidence that Williar had notice of the usage of substitutions. It must always be true, then, when a new usage or custom is introduced, some time must elapse before all persons dealing in the matters affected therewith, will be held bound thereby without regard to the fact of actual knowledge or notice. It is well settled that the general customs of the country, and the general customs of merchants, are judicially noticed by the courts. Having become a part of the law, and having been recognized by prior decisions, subsequent judges are bound to know them. Sec. 50.

A single witness may prove a custom. Sec. 53.

We may now well inquire whether the great commercial exchanges established in all the principal cities of the country, have not become so generally known that their modes of transacting business will be judicially noticed by the courts, without proof. If so, without disputing the correctness of the rule in *Irwin* v. *Williar*, under the circumstances of that particular case, this court may now declare that the time has fully come when, on a larger view of the whole subject, it will be held no longer necessary to prove, in any case, the existence of such usages and customs as prevail in the Exchange of the Chicago Board of Trade. With especial propriety might this be done in the present case, in view of the fact that the courts of Illinois hold substantially that doctrine.

It is true that in the present case the charge of the court assumes that the defendant did have knowledge of the usage and custom of the market in regard to substitutions. *It is also true that the evidence clearly shows that he did have such knowledge.* And for a reason which will be set forth below, the plaintiffs desire to show that the fact of such notice and knowledge is established by the record, and not merely assumed by the charge.

Both law and fact necessarily enter into every usage. For what is a sufficient usage, is a question of law; and whether it exists in fact, and whether a compliance with it has been shown, are both questions of fact for the jury. Sec. 60.

It is quite clear, both on reason and authority, that an agency must be executed in accordance with usage. If the execution is to be in a particular place, the usages of that place are, impliedly, incorporated into the contract. If the agency relate to a particular business, the usages of that business are, necessarily, part of the contract. Sec. 142, 144.

Usage is admissible to add unexpressed terms to a contract. And although the parties may differ as to the usage, such a difference does not destroy the contract itself. Sec. 183, 186.

As showing the growth and development of the law, and the manner in which usages adapted to one age are set aside by conflicting usages at a subsequent time, it is well to note that usages in conflict with the rules of what would otherwise have been the common law, have been admitted in a great variety of cases, including suits relating to common carriers, corporations, insurance, partnership, principal and agent, vendor and purchaser, and the like. Secs. 230, 232, 238, 239 and 241.

After reviewing the contradictory cases and conflicting decisions, the learned author states the rule to be, in substance, that the usage must not be contrary to public policy, nor be, as to the parties, unjust or oppressive, that is, unreasonable. Sec. 248. And it is obvious that usage or custom can not be permitted to prevail against the positive enactment of a statute, though this is included in the statement that the usage must not be contrary to public policy, for the public policy of a State is, in part, expressed in its positive law.

As a matter of evidence the courts will generally take notice without proof, of whatever ought to be generally known within the limits of their jurisdiction. Where the memory of the judge is at fault, he resorts to such documents of reference as may be at hand, and he may deem worthy of confidence. Under this rule, the court may refer to the printed rules and regulations of Boards of Trade and other exchanges.

The term usage is ordinarily applied to trade, and designates the habits, mode and course of dealing which are generally observed, either in any particular branch of trade, or in all mercantile transactions. When a local custom, of a general or public nature, is once established by a judgment, the judgment is competent evidence of the existence of the custom in all other cases, though the parties may be different. Under this rule this court may recognize the fact that the State and Federal courts of Illinois and the neighboring States have repeatedly adjudged the validity of all the rules, usages and customs which are involved in the transactions in question in the present controversy.

It is sufficient that a usage of trade be established, known, certain, uniform, reasonable and not contrary to law. Even the usage or habit of trade or conduct of an individual, which is known to the person who deals with him, may be given in evidence to prove what was the contract between them.

1 Greenleaf Ev. Secs. 4, 5, 6.
2 Ib. Secs. 248, 249, 251.

8. THE JUDGMENT BELOW SHOULD BE REVERSED WITH A DIRECTION TO ENTER A JUDGMENT FOR THE PLAINTIFFS, *non obstante veredicto.*

The charge of the court below is a serious public calamity. Throughout the entire Sixth Judicial Circuit, it impeaches and declares contrary to law, and invalid, the established method of transacting business in all the grain exchanges of the country. The plaintiffs have demonstrated their strict and literal conformity to the established mode of transacting business in the Chicago grain exchange. They took the utmost pains to comply with the rule for the substitution of contracts, as that rule has been settled and expounded by the uniform usage and practice of the Board of Trade under it. The attack of the court below is, therefore, not on any personal act, omission or default of the plaintiffs, but on the Chicago Board of Trade, and its mode of doing business. And as substantially the same methods of transacting business are followed in other cities, the charge of the court below is in effect a condemnation of a leading feature of the grain exchange business of the whole country, without which that business, with its present immense volume and number of transactions, could not be successfully transacted.

The judgment below should therefore not only be reversed, but the charge of the court should be so overruled, and the true doctrines of law applicable to the subject so declared as to set at rest the alarm that has been created, and re-establish the confidence that has been shaken. If the judgment below could be affirmed, other suits for the recovery of millions of dollars, paid out in perfect good faith, by parties engaged in the same business as that pursued by the plaintiffs in error, would be encouraged, and we should doubtless see a multitude of confessed grain gamblers rushing into the national courts, to recover their advances to parties who never had a thought of engaging in a gambling transaction, and, indeed, could not have done so, except at the peril of expulsion from the Exchange where the business is conducted.

The plaintiffs in error regard the reversal of the judgment below as a matter of simple moral certainty. They can not understand how it is possible that a judgment, which so shocks the moral sense by its injustice, can be upheld. But they are not satisfied with a mere reversal of that judgment. They ask of this court, not merely a reversal of the judgment rendered against them; they also ask this court to declare that the entire merits of the case are so set forth and disclosed in the record, and that the record shows so clearly the rights of the parties, that no further trial is needed to determine them. But that if any further trial should be had, and any other result reached than a judgment in favor of the plaintiffs for the amount claimed by them, such a judgment would be set aside by this court. If these things be so, then the plaintiffs are entitled to a direction to the court below to enter a judgment in their favor, notwithstanding the verdict rendered in form against them under the direction of the court.

The law is thus stated. "Judgment *non obstante veredicto*, is a judgment rendered in favor of the plaintiff. notwithstanding the verdict for the defendant. This judgment is given upon motion, which can only be made by the plaintiff, *when upon an examination of the whole proceedings, it appears to the court that the defendant has admitted himself to be in the wrong, and that the issue, though decided in his favor by the jury, is on a point which does not at all better his case.*" Bouvier Law Dic., title Judgment; citing Smith on Actions, 161 and sundry cases.

It is the duty of the court to give judgment, according to law, *on the whole record.*

Fitch v. *Scott*, 1 Root, 351.

Judgment *non obstante veredicto* is given only on the merits of the case, and when they clearly appear of record.

2 Tidd's Pr. 4th. Am. Ed. Fish, 922.
Bellows v. *Shannon*, 2 Hill, 86.
Sullenberger v. *Gest*, 14 Ohio, 204.

The verdict in the present case, although in form against the plaintiffs, was first in fact in their favor, under the charge of the court, to the effect that the plaintiffs had not been guilty of gambling, but had acted in good faith. But under the further direction of the court the jury found in form for the defendant, on the ground that there had been no valid substitution of the contracts. Now, as is above shown, the record which is before this court demonstrates the right of the plaintiffs to recover, and that the counterclaim is barred. The plaintiffs should therefore be saved the trouble and expense of further litigation in the court below, and should be awarded, without condition, the recovery so manifestly their due. Further litigation is needless, and no finding against the plaintiffs would be permitted to stand. The defendant avows himself a gambler in grain; he should not be permitted to become, also, a gambler in justice.

WHAT THIS COURT IS ASKED TO HOLD.

In conclusion, the plaintiffs in error now ask this court to hold:

a. That in charging the jury as though it were a matter of law, that the plaintiffs had not shown a compliance with the rule for the substitution of contracts, and in deciding as if it were a matter of fact, that such compliance had not been shown, the court below invaded and usurped the province of the jury, and committed a fatal error, for which the judgment will be reversed.

b. That the point of non-compliance with the rule of substitution, even if true in fact, as assumed by the court, was, under the circumstances of the case, as fully set forth and disclosed in the pleadings and evidence, absolutely immaterial to the merits of the controversy, and constituted no ground whatever for defeating the plaintiffs' claim.

c. That the entire record discloses the affirmative fact, that the alleged *irregularity* in the matter of substitution did not result in any damage, injury or loss to the defendant, and therefore constituted no ground whatever for any recovery by him on account of the money advanced in the course of the business.

d. That, having admitted and confessed himself to have intended, and so far as his acts could go, made himself guilty of the offense of gambling, in violation of law and public policy, such admission and confession of record operates as a perpetual and conclusive bar to any recovery by the defendant on account of the transactions involved. And that the assumption that notwithstanding his own guilt and culpability, the defendant is entitled to recover his advances to the plaintiffs by reason and in virtue of their innocence, integrity and good faith, is utterly abhorrent to justice and the true intent and purpose of the law.

e. That the time has finally arrived when this court will fully recognize the existence of the rules, regulations and well established customs and usages of the great commercial exchanges of the country; and will hold it no longer necessary to prove, in the course of judicial proceedings, unless required by denial and issue joined, that parties dealing with such exchanges had notice or knowledge of their mode of transacting business.

f. That the time has also arrived when this court, for the purpose of preventing, as far as possible, all unnecessary re-trials and reviews, whenever it clearly appears to this court from an inspection of the entire record that the matters in controversy have been once fully litigated and no just cause for further litigation appears, will peremptorily direct the court below to enter the proper judgment for the party in whose favor the right clearly appears. And that accordingly the court will, in this case, direct the court below to enter judgment in favor of the plaintiffs for the amount claimed by them, and to which they are shown to be entitled, notwithstanding the verdict rendered against them under the direction of the court.

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Note.—I find in an elaborate article prepared by Mr. Merritt Starr [redacted] under the title of *The Exchange Clearing House*, such a learned and comprehensive review of the present and kindred cases, and such an admirable exhibit and illustration of the mode in which business is transacted in the great commercial centers of the country, that with the consent of the learned author, I append a copy of the principal part of his paper to this brief of my argument. I am sure that I can add nothing to the force and clearness with which he has described the commercial machinery with which the gigantic exchanges of the country are effected from day to day, as quietly and with as much precision as a perfect chronometer marks the passing hours. Necessity has again proved the mother of invention, and no one can contemplate without admiration the simplicity and efficiency of the means by which enormous savings of time and labor are daily effected.

In the Supreme Court of the United States.

HIGGINS and GILBERT vs. McCREA. } *Error to E. D. of N. D., Ohio*

APPENDIX TO PLAINTIFFS' BRIEF.

STARR ON THE EXCHANGE CLEARING HOUSE.

Higgins v. *McCrea*, 23 Fed. Rep. 782.
Robinson v. *Mollett*, L. R. 5, C. P. 646; L. R. 7, C. P. 84; L. R. 7 H. L. C. (Eng. & Ir. App.) 802.
Irwin v. *Williar*, 110 U. S. 499.

[The learned author first gives a condensed statement of the facts of the case of *Higgins et al.* v. *McCrea* (U. S. Circuit Court, N. D., Ohio, E. D., April Term, 1885), with copious quotations from the charge to the jury, omitted because a more full and complete statement has been made above, and then proceeds as follows:]

The general principle that in a mercantile transaction the established customs of the particular line of business in which the transaction is made, when not contrary to law or to the terms of the contract, form part of the contract, is well settled.

1 Bl. Com. 75; 2 Starkie, Ev., 450, *et seq.*

It is a simple and proper application of this rule that one who deals in a particular market must be taken to deal according to the known, general and uniform usage of such market. And one who employs another to trade for him at a particular market is taken to intend that the business shall be done according to the custom of the market, whether the principal in fact knew of the usage or custom or not.

Bailey v. *Bensley*, 87 Ill. 556.
Sutton v. *Tatham*, 10 Ad. & El. 27.
Bayliffe v. *Butterworth* (per Parke, B.), 1 Welsb. H. & G. 428.
Taylor v. *Stray*, 2 C. B., U. S., 175.
Smith v. *Linds*, 5 C. B., U. S., 587.
Nickalls v. *Merry*, L. R., 7 H. L. 530.

The same principle is still further extended by the rule that when a known usage or mode of transacting business is applicable to a particular agency, it will be the *duty* of an agent in transacting business of that kind to conform to such custom, and the contract will be construed according to such custom.

Summer v. *Stewart*, 69 Pa. 321.
Kraft v. *Fancher*, 44 Md. 204.
Colket v. *Ellis*, 10 Phila. 375.
Rapp v. *Grayson*, 2 Blackf. 130.
Story on Agency, Sec. 199.
Russell on Mercantile Agents, p. 26.
Wharton on Agency, Sec. 696.
Lawson on Usages and Customs, Sec. 142.

And, to come closer to the case above, it is settled that the rules and customs of an exchange, when not against good morals or the policy of the law, are binding on principals who employ brokers to deal for them at the Exchange, although they may not themselves be acquainted with such rules and customs.

Markham v. *Jandon*, 41 N. Y. 235.
Wall v. *Bailey*, 49 N. Y. 464, at 473.
Whitehouse v *Moore*, 13 Abb. Pr. 142.
Rosenstock v. *Toomey*, 32 Md. 169.
Bailey v. *Bensley*, 87 Ill. 556.
Bayliffe v. *Butterworth*, 1 Exch. 425.
Sutton v. *Tatham*, 10 Ad. & El. 27.
Bowring v. *Shepherd*, L. R., 6 Q. B. 309.

Johnston v. *Usborne*, 11 Ad. & El. 549.
Mitchell v. *Newhall* (per Pollock, C. B.), 15 M. & W. 308.
Bayley v. *Wilkins*, 18 L. J., C. P. 273; S. C., 7 C. B. 886.
Pollock v. *Stables*, 12 Q. B. 765.
Cruse v. *Paine*, L. R. 4, Ch. App. 441.
Lacey v. *Hill*, L. R., 8 Ch. App. 921.
Grissell v. *Bristowe*, L. R., 3 C. P. 112.
Hawkins v. *Maltby*, L. R., 3 Ch. App. 188.
Coles v. *Bristowe*, L. R., 4 Ch. App. 3.
Maxted v. *Paine*, L. R., 4 Exch. 81, 205; S. C., L. R., 6 Exch. 132.
Sheppard v. *Murphy*, 1 Ir. Eq. (Mays) 490; S. C., 16 W. R. 948.

The ground upon which the above rule is sustained is, not that the principal is presumed to have inquired and learned of the usages and customs, but that it is within the authority of the agent to deal according to such usages.

As was said by Wilde, C. J., in *Bayley* v. *Wilkins*, cited *supra*, the party who has employed the broker must be implied to have authorized the plaintiff (broker), to do all that was necessary in order to perfect the transaction.[1]

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[1] It is true that certain classes of usages, *e. g.* usages which [1] make a new; contract; [2] usages held to be "against fixed rules of law;" [3] "against public policy;" and [4] "against good morals;" and [5] usages and rules adopted after the the inception of the contract, have been held not binding on the principal without his consent; and [6] as to certain rules of an Exchange that they should not be binding on non-members of the Exchange.

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[1] Tilley v. Cook County, 103 U. S. 155; Lombards v. Case, 30 How. Pr. 117 Parsons v. Martin, 77 Mass. 111.

[2] Walls v. Bailey, 49 N. Y. 464 at 469; Shaw v. Spencer, 100 Mass. 382.

[3] and [4] Colket v. Ellis, 10 Phil. 375; Rich v. Royce, 39 Md. 314; Duncan v. Hill, L. R. 8 Exc. 242, reversing S. C. L. R. Exch. 255; Nicholson v. Gooch, 5 El. & Bl. 999; Evans v. Waln., 71 Pa. 69; Day v. Holmes, 103 Mass. 306.

[5] Westrop v. Salomon, 8 C. B. 345.

[6] Tompkins v. Safferty, L. R., 3 App. Cas. 213.

Concerning the second class it may be said that a man may by contract waive a right secured to him by a "fixed rule of law," (indeed he has no rights except those secured by "fixed rules of law," and can not make and perform any contract without parting with something secured to him by "fixed rules of law;") that such waiver may be by a contract implied as well as express; and that such a contract of waiver may be implied as to a usage as well as to anything else.

Concerning the third and fourth classes it may be said that nothing definite has yet been developed from those principles except that certain usages, under particular states of fact, have been held theo against public policy or against good morals; that these cases, so far as they go, are limitations on the doctrine that the law merchant is part of the law of the land; that usages, when shown to exist, are not *presumed* to be against public policy and public morals, and that in such cases the administration of policy and morality by the courts, apart from statutory rules imposing the duty, is the substitution of a loose and dangerous discretion as to business affairs for the accepted and established methods of business men.

With these principles settled, their application to the case printed above would seem to be a simple matter.

But in addition to the foregoing, the usage given in evidence in that case has itself been repeatedly considered and passed upon. In *Irwin* v. *Willar*, 110 U. S., p. 499, the Supreme Court of the United States was called upon to pass on the validity of a similar usage in force in the Baltimore Corn and Flour Exchange. The court, per Matthews, J., said:

"The custom proved was offered to show this per-"formance" (by the broker of his contract), "and "consequent loss; and in doing so it disclosed that "the brokers did not perform the original contracts of "sale actually made, but delivered equal quantities of "grain, at its market value, in fulfillment of contracts "of purchase made by them for others, and which, by "the process of mutual exchange, authorized by this "custom, had come into their hands for that purpose. "This exchange and substitution and payment of differences to effect it, working as it does a complete "change in the nature of the seller's rights and obligations, can not be made without his assent, *and "that assent can be implied only from knowledge of the "custom which it is claimed authorizes it.*"

By reverting to the case printed above it will be seen that the court charged the jury to assume that the defendant "did know and did consent that these plaintiffs might act under the rules of the Chicago Board of Trade, and that knowledge and acquiescence of his authorized the plaintiffs to cancel the first contracts."

It is submitted that in this charge Judge Baxter conceded that all was proved which was necessary to make the custom binding on the defendants; and in his further charge, that the substitution did not bind the defendants, he erred.

(1) He erred in ruling that the substitution in accordance with the *usage* of the board, was not in compliance with the *rule* of the board. The question whether the rule was complied with, was one of fact and not of law, and the charge was so far an invasion of the province of the jury. The Board of Trade and its members are the best authority on the proper manner of obeying its own rules. Their testimony so far as given in the case was uncontroverted, that the substitution was strictly in accordance with the usage of the board, and that this usage was in compliance with the rule.

(2.) The usage of the board, employed in carrying out this rule, is just as binding as the rule itself.

Morse on Banks and Banking, p. 451.

(3.) So far as the validity of the custom of the Chicago Board of Trade is a question of law, it is a question of Illinois law, and it is settled by the Illinois law that this precise usage is a valid usage.

Oldershaw v. *Knoles*, 4 Brad. (Ill. App.) 63; 6 Id. 325.

Bailey v. *Bensley*, 87 Ill. 556.

THE EXCHANGE CLEARING HOUSE.

But the custom involved in this case is one of universal importance in the commercial world. It is the employment of the Exchange Clearing House for the settlement of contracts for commodities. The custom itself prevails in many of the stock and produce exchanges in England and America, as well as at the Bourse in Paris. It is the direct outgrowth of the business of the Exchange. It has been the subject of repeated suits; but its legal status is by no means uniform in the several courts. Like many other mercantile customs it has encountered some prejudice at the hands of the law.

The reason of this is not far to seek. The usage is the outgrowth of a special form of traffic, requiring very different machinery and different agencies from the ordinary forms of business. The courts have attempted to apply to it rules of law based on entirely different forms of traffic.

It is the same tendency which was illustrated in the law of partnership. The English courts, instead of recognizing and adopting the mercantile view, that a partnership was a commercial entity or person, distinct and separate from all its members, and having relations of principal and agent and debtor and creditor with its members. attempted to work out the relations of partners by the law of joint tenancy and tenacy in common.

See Cory on Accounts, chapter IV.

The law of partnership has not yet outgrown the hindrances thus placed in the way of its proper development. In the case of the Exchange Clearing House, the difficulty of some of the courts grows out of their attempt to work out the legal relations of the parties by the law of agency simply, instead of recognizing the special instrumentality employed by the commercial world, and adopting it in its entirety.

The Exchange Clearing House is not the child of the Banker's Clearing House, but is itself the parent. In old times the French merchants developed the custom of making their bills payable at the great annual fair at Lyons, where they met to balance their accounts and pay their differences.

See 1 Lalor's Cyclopedia of Political Science, p. 494, citing Boiseguillebert's *Nature des Richesses*.

To show the similarity of the workings of the Exchange Clearing House to those of the Bankers' Clearing House, we quote the following brief statement of the operation of the latter from 1 Lalor's Cyclopedia of Political Science, p. 493, article, "Clearing and Clearing Houses," by H. D. Lloyd.[1]

"Clearing between banks is a simple process, done "in substantially the same way in all the clearing "houses. At a certain hour in the morning every

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[1] See also Morse on Banks and Banking, 1 Ed., p. 387, Title *Clearing House*. That the Bank Clearing House has encountered the same reception at the hands of the courts, see Overman v. Hoboken City Bank, 1 Vroom, 61; 2 Id. 563; Merchants' Nat'l Bank v. Eagle Nat'l Bank, 101 Mass. 281. For recognitions of the rules of the Bank Clearing House, see Fernandez v. Glynn, 1 Camp. 426; Reynolds v. Chattle, 2 Camp. 596.

"bank sends a clerk and messenger to the clearing "house, where each bank has its desk. Its clerk sits "at this desk and receives from the messengers of all "the other banks in turn, all the checks, or 'ex-"changes' held against it for payment. As the mes-"sengers deliver their exchanges they take receipts. "When all the messengers have made the tour of the "room each bank will have received through its clerk "all the checks held against it by the other banks in "the clearing house, and will have delivered through "its messenger to every other bank all the checks or "'exchanges' it holds for payment. If it receives more "than it has delivered, it is a 'debtor' bank, and "has a balance to pay; if it delivers more than it has "received; it is a 'creditor' bank and must "be paid a balance. In the New York Clearing "House this process of delivering 'exchanges' and "taking receipts usually consumes about ten minutes. "Without the clearing house the messengers would "need six to eight hours to do the same work. Proof "sheets are made, under the supervision of the man-"ager of the clearing house, to see that everything "balances, and no clerk is allowed to leave until any "error made has been discovered and corrected. At "a later hour—before 1:30 in New York and 12:30 in "Chicago—the debtor banks must pay to the clear-"ing house for the creditor banks, the balance due."

The simpler working of the Exchange Clearing House is thus stated by Mr. Justice Matthews in the statement of facts in the case of *Irwin* v. *Williar*, 110 U. S., p. 499, *et seq.*:

"There was evidence tending to show that among "the general usages and customs obtaining at Balti-"more among grain commission merchants, were the "following, which were well known and which had "long existed and been uniformly observed among "the members of said corn and flour exchange, "and others engaged in the buying and selling of "grain on commission at said city, viz.: * * * (After stating the principle generally.) "Thus, if com-"mission merchant A, upon the order of his customer "X, has sold grain for a designated future delivery to "commission merchant B, and afterward, upon the "order of customer Y, buys like grain for like de-"livery from B, A and B adjust the difference, cancel "their contracts, and surrender any margins that may "have been put up by them; and in such case A substitutes his second customer, Y, in place of B, so that "the grain he had sold on the order of X would be "delivered to Y instead of to B, A standing as "guarantor to Y that X will deliver the grain, and "to X that Y will receive and pay for it, and that X "shall receive the full price at which the grain had "been contracted to B."

The extention of the system was thus stated by Judge Gresham in the trial of that case on the circuit.

"The evidence further tends to show a custom ob-"taining among commission merchants at Baltimore "to the further effect that though the second transac-"tion may have been had with a different commission "merchant from the one with whom the first transac-"tion was had, yet, whenever it can be found that "a series of contracts are in existence for the sale of "the grain, for the delivery, so that the seller owes "the wheat to the buyer to whom he sold, and he to "another, who owes like wheat for like delivery to "the first commission merchant, that then in such "case, they settle by what they call a 'ring.' That "is, they all reciprocally surrender or cancel their con-"tracts, adjust the price differences between them-"selves, and surrender all margins that had been put "up; that in all such cases the commission merchant "substitutes the contract of another customer in "place of that with the commission merchant, whose "contract had been canceled or surrendered, and "that he guarantees to his customer the performance "of the contract originally made in his behalf."

The Exchange Clearing House has been still more fully developed in the larger stock and produce exchanges. Thus at the Chicago Board of Trade a "settling room" is provided in the Exchange Hall, where the clerks of the several brokers meet each morning and adjust their mutual trades, or in the local phrase make "ring settlements," and "ring out the deals."

An adjoining room is devoted to the "Board of Trade Clearing House." The Clearing House receives daily notes of all the balances due on trades made by all the members of the Board of Trade. It tabulates all these deals on a large sheet, showing on one side balances each broker has outstanding on bought contracts and on the other side the balances each has due on his sold contracts. The names of the houses actively engaged in business usually appear on both sides of the daily sheet; most houses have unsettled bought contracts and unsettled sold contracts.

Copies of this sheet are distributed to the settling clerks each morning. The settling clerks meet, each provided with a copy of the sheet, the clerk of a house having an unsettled bought contract. looking to the house which has sold to it, and the clerk of the house having an unsettled sold contract to the house which has bought from it, and this is repeated until the original buyer is found to have sold to some one in the circuit, and the ring is complete. Thus, A has bought wheat of B; A also has sold wheat to E. In the settling room the clerks find that A has bought of B, B of C, C of D, D of E, and E has bought of A. A ring is formed of these trades.

It would be a simple but laborious matter for A, who sold to E, to load his wheat on wagons and delivered it at A's warehouse, for E likewise to deliver it to D and so on, until B delivered this identical wheat to A from whom it started. It would be easier for A to send a warehouse receipt to E, and for him to pass it on about the ring until it came back to A.

The ordinary delivery on the Board of Trade is even simpler. It is done by sending a delivery notice to the buyer, reading substantially as follows:

"This notice is deliverable on contracts in the Exchange hall, only between the hours of 1:30 and 2:15 o'clock P. M., and the property must be called and paid for at the office of its issuer before 2:15 o'clock P. M.:

DELIVERY NOTICE.

No....

Office of...............

....

CHICAGO,............188..

To Messrs......................

We have on hand, ready for delivery, the following described warehouse receipts, and hereby make tender to you of the same in fulfillment of our contract of sale to you of

..............................at...............

....

Date.	Warehouse.	Quantity.		Storage.	
—		Bushels.	Lbs.	Cts.	Amount.

On the back of this delivery notice appears the following indorsement:

	Delivered	
To		Time.

This delivery notice is often passed from hand to hand and made to perform many deliveries; the party first receiving it indorsing his name on the back, and then sending it to the party to whom he owes a delivery. Now, such a delivery notice might be handed by A's settling clerk to E's clerk, and so passed on around the ring until it came back to A. The deliveries would then all be made and the settlement complete, leaving all parties where they started. There is, therefore, no need to deliver anything from hand to hand about the ring. The same end is reached if the clerks who form the ring mutually acknowledge the performance of the several contracts; and in practice this is done simply by forming the ring. The moment the circuit is complete and the differences settled the contracts are all treated as performed and settled. Each house then returns all margins received.

In this case we have supposed that all the purchases and sales, having taken place on the same day, were at the same price. But usually, as the price fluctuates during the day, the several transactions are at varying prices. Here the clearing house performs an important office. An average settling price for the day is fixed by the officers of the board; not a separate average for each ring, but a single settling price for all the settlements of the day. Usually the price at eleven o'clock is taken. All who have bought at a higher price pay to the Clearing House Bank the amount of the difference. All who have bought at a lower price receive from the bank the amount of the difference. So all who have sold at a lower price pay to the bank the amount of the difference, and all who have sold at a higher price receive the amount of the difference.[1]

Under the rule given:

A receives from the bank as buyer, 2 cents per bu.
" " " " " as seller, 1 cent per bu.
B receives from the bank as buyer, 2 cents per bu.
C receives from the bank as buyer. 2 cents per bu.
D receives *nothing*, either as buyer or seller.
E receives from the bank as seller, 1 cent per bu.

Total received by the ring from the bank, 8 cents per bu.

Further:

A pays *nothing* to the bank, either as buyer or seller.
B pays the bank as seller, 2 cents per bu.
C pays the bank as seller, 2 cents per bu.
D pays the bank as buyer, 1 cent per bu.
" " " " as seller, 2 cents per bu.
E pays the bank as buyer, 1 cent per bu.

Total paid to the bank by the ring, 8 cents per bu.

B and C each pay 2 cents and each receive 2 cents; E pays 1 cent and receives 1 cent. We may therefore cancel them, and, reducing the equation to the lowest terms, find that A has received 3 cents, and D has paid out 3 cents per bushel. *And this is precisely the result which would have been reached if each trade had been settled separately and the wheat had been delivered in each case.*

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[1] In the ring above, suppose the settling price for the day is 90 cents per bushel, and that A, B and C bought wheat at 88 cents; and D and E bought at 91 cents, it follows that,

A bought at 88, and sold at 91.
B bought at 88, and sold at 88.
C bought at 88, and sold at 88.
D bought at 91, and sold at 89.
E bought at 91, and sold at 91.

As appears from the note, no one either makes or loses in the trade by the operation of the ring. The value consists in the immense saving of time and labor.

The ring settlement differs from the Bank Clearing House in several respects. The entire membership of the Exchange does not resolve itself into a single ring as is the case in the Bank Clearing House, but the members form several smaller settling rings, which are carried forward at the same time. Again, the ring settlement is an entirely voluntary adjustment between the members of the particular circle. If, for any reason, either A, B, C, D or E did not choose to "ring up" that particular deal, or did not choose to ring it up with those particular parties, he need not do so, but may insist on a separate settlement, or he may ring up the deal in another circle, if he can find one of which his trade can be made a component part.

We have thus far considered the ring as between members of the Exchange, dealing upon their own account. But frequently the members are not dealing for themselves, but as brokers for others. If those others are members, of course they know all about the rules and usages and are governed by them.

Durant v. *Burt*, 98 Mass. 161.
Colket v. *Ellis*, 10 Phila. 375.

But where the member acts as a broker for an outsider, the question has proved more difficult. As, in the supposed ring, A has bought from B, and sold to E, he usually has bought for one person, say X, and sold for another, say Y. Can he lawfully ring up these trades? Is not the contract with B held for X's benefit, and has A any right to release B? Is it not a violation of his duty to X? The true answer to these questions lies in the nature of the broker's contract. This is admirably stated by the late Baron Bromwell in *Browning* v. *Shepherd*, L. R., 6 Q. B., 309 at 325. He said, "The true way to look at these contracts and to understand them is, that when A purports to buy of B for the account of A, what he really does is this: A, in effect, says: "I will on the account day take of you, and pay you for certain shares, or I will find some person who will do it for me." And B, on the other hand, says, "On that day I will transfer to you certain shares and receive from you payment for them, or I will find somebody who will do it." That is the true explanation of the Stock Exchange contract. When the time arrives, the seller finds his substitute, and the purchaser his, and the two substitutes meet through their brokers, then the obligation is created between them."

And this view is reaffirmed by the recent case in the House of Lords of *Nickalls* v. *Merry*, L. R., 7 Eng. & Ir. Ap., 530.

In the ring supposed, as the contract with B is not specially appropriated for the benefit of X, A has only agreed with B to take or find a substitute by a given time. With X he has only agreed to procure the wheat by a given day. The contract with B is appropriated to X with the right of substitution reserved.

Therefore A has the right, if he wishes to ring up the contract with B, to do so, if he first secures another contract to substitute therefor.

It may be asked what advantage it will be to A or his customers to buy in a new contract in order to close out the old one. The answer is twofold: (1) Financial prudence; (2) convenience in accounts. Experience has shown that old contracts on a broker's books are like an old stock in trade. It is not safe to carry the contracts too long. It is better for the broker from time to time to close out the old contracts and make new ones at market rates, settling the difference and so keeping the contracts that stand open on his books near to the market price, and keeping the differences closely settled with his principals. The loss on old bought contracts is likely to be greater in case of a panic, and the loss on old sold contracts is likely to be greater in case of a corner, than when the contracts are kept closely at market prices. It is simply the easiest method of keeping the margins good.

We have already noticed the principles of usages in general with which the decision printed above is at variance, and have traced the operation of the usage in question. It remains to notice the decisions upon this particular usage.

First, we have to notice Lord Romilly's decision in *Hodgkinson* v. *Kelly*, L. R., 6 Eq. Cas., 496; speaking of a purchase through a chain of sellers, he said, "*It is a transaction regulated by a particular practice, having reference to contracts of this description only, a practice long subsisting, recognized by courts of law, of which all parties are cognizant, and from which neither party can recede. It is obvious also that it is founded on common sense and common honesty, for it is of no sort of importance to A to know to whom his shares are transferred, nor is it to B to know from whence the shares come.*"

In America it has been equally well settled since the decision of *Nourse* v. *Prime*, by Chancellor Kent, (4 Johns. Ch. 490), that *it is not necessary for a broker to preserve the identical stock bought by him for a particular order; that its identity is immaterial, and that the broker's duty is simply to retain on hand such stock of* *kind and quantity sufficient to provide for the order; and that subject to this limitation he may buy and sell as he pleases, and change the stock at will.* *Nourse* v. *Prime*, *supra*, S. C., 7 Johns. Ch. 69.

Horton v. *Morgan*, 19 N. Y. 170.
Stewart v. *Drake*, 46 N. Y. 449.
Taussig v. *Hart*, 58 N. Y. 425.
Levy v. *Loeb*, 85 N. Y. 625.
Gilpin v. *Howell*, 5 Barr, Pa. St. 41.
Wynkoop v. *Seal*, 64 Pa. St. 361.
Worthington v. *Torrey*, 34 Md. 182.
Price v. *Gover*, 40 Md. 102.
Atkins v. *Gamble*, 42 Cal. 86 at 103.
Boylan v. *Hugust*, 8 Neb. 345.
Berlin v. *Eddy*, 33Mo. 426,[1]

And the same rule has prevailed in England from the time of the litigation over the South Sea Bubble to the present time.

Le Croy v. *Eastman*, 10 Mod. 499 and (1722, *per* Parker, L'd Ch.)

These principles, making the identity of the party dealt with, and the identity of the shares dealt in, immaterial in transactions with a broker, contain the whole *rationale* of the Exchange Clearing House. It would be difficult to state more accurately the precise principles upon which it is carried on. Chancellor Kent, in the leading case of *Nourse* v. *Prime*, put stock in a broker's hands on the same footing with grain in a warehouse. He held the claim of the customer to be only for a given amount, and not for specific shares.

The latest decision in America (*Irwin* v. *Williar*, 110 U. S. 499) expressly following the latest decision in England, is to the effect that the usage is not invalid or in itself against public policy, but that it so far changes the broker's position into that of a vendor that it will not bind the principal without his knowledge and assent.

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[1] For decisions *contra*, see Allen v. Dykers, 3 Hill (N. Y.), 593; S. C., 7 Hill, 497 (which may be regarded as overruled *sub silentio*), and Parsons v. Martin, 11 Gray, 111.

The English case, *Robinson* v. *Mollett*, is one of great interest. The judges of Common Pleas were equally divided at the first hearing: L. R., 5 C. T., 646. On appeal to the Exchequer Chamber, the judges were equally divided there: L. R. 7, C. P. 84. Each time therefore, a formal judgment for the plaintiff, with a rule *nisi*, was entered, and an appeal taken to the House of Lords: L. R. 7 H. L., Eng. & Ir. App., 802.

There the defendant, a merchant in Liverpool, employed the plaintiffs to buy tallow for him in the London market. In an action for loss by the broker upon a release of the tallow, which the defendant refused to accept, it was shown that:

"There exists an established custom in the London tallow trade, for brokers, when they receive an order from a principal for the purchase of tallow, to make a contract or contracts in their own names without disclosing their principals, and also to make such contracts either for the specific quantity of tallow so ordered, or to include such order with others they may have received in a contract for the entire quantity, or in any quantities at their convenience, at the same time exchanging bought and sold notes with the selling brokers, as above described in the present case, and passing to their principals a bought note for the specific quantity ordered by them, and that when a broker so purchases in his own name, he is personally bound by the contract; and that on the usual settling days, the brokers balance between themselves the purchases and sales so made, and make or receive deliveries to or from their principals, as the case may be, or, if their principals refuse to accept or deliver, then to sell or buy against them, as the case may be, and charge them with the loss, if any, or, if delivery is not required on either side, then any difference which may arise from a rise or fall in the market is paid by the one to the other. This custom does not exist at Liverpool, and was unknown to the defendant. The whole of the transactions and dealings in the present case were carried out in accordance with this custom."

The judges of Common Pleas who favored adopting the custom in its entirety, as part of the contract, independent of notice to the principal, were Bouvill, C. J., and Montague Smith, J. At the Exchequer Chambers the same view was sustained by Kelly, C. B., Channell, B., and also by Lord Justice Blackburn, who delivered an opinion showing a most profound insight into the practical workings of the custom. At the House of Lords, Blackburn, L. J., referred to his former opinion and supplemented it by further remarks, which were concurred in by Baron Amphlett.

On the other side, holding that knowledge by the principal must be shown, there were at the Common Pleas, Willes and Keating, JJ.; and at the Exchequer, Hannen and Mellor, JJ., and Cleasby and Mellor, who were reinforced by Brett and Grove, JJ., and carried their "noble and learned friends" with them. Willes, Keating, Mellor and Cleasby, objected on the ground that the custom enabled the broker to sell directly to his own principal, and would enable him to pass off an inferior bargain on the principal. Hannen, J., thought that the custom would be good in case of a commission merchant, but not in case of a broker. How it would be in the case of one doing business as a "broker and commission merchant" (a common combination), he did not say.

Blackburn, J., in explaining the origin of the cus-

"I say to you, gentlemen, that these customs are founded in commercial convenience; that they are not in contravention of the law, and that they are valid."

Williar v. *Irwin*, 11 Biss. 57.

The same rule was thus expressed by U. S. District Judge Bunn, in the Western District of Wisconsin. "If the transactions disclosed by this case are illegal, then, undoubtedly a great part of the banking and clearing house transactions in our great commercial centres are illegal also. I am persuaded that to hold them so would be trenching too severely upon the business of the commercial world, without any corresponding benefit to be expected from it."

Clark v. *Foss*, 7 Biss. 540.

MERRITT STARR.

Chicago, 1885.

6-671

Office Supreme Court U.S.
FILED
DEC 11 1885
JAMES H. McKENNEY,
CLERK

IN THE

SUPREME COURT OF THE UNITED STATES,

OF THE OCTOBER TERM, A. D. 1885.

NO. 1197.

HIGGINS & GILBERT VS. McCREA.

Error to E. Div. N. Dist. Ohio.

Act of Incorporation, Rules, By-Laws and Inspection Regulations of the Board of Trade of the City of Chicago.

IN FORCE JANUARY 1, 1882.

Filed with Plaintiffs' Brief for Convenience of Reference.

CHICAGO:
PRINTED BY THE CHICAGO LEGAL NEWS COMPANY, 175 MONROE STREET.
1885.

ACT OF INCORPORATION,

RULES, BY-LAWS

AND

INSPECTION REGULATIONS

OF THE

Board of Trade of the City of Chicago.

IN FORCE JANUARY 1, 1882.

CHICAGO:
KNIGHT & LEONARD, PRINTERS.
1882.

LEGISLATIVE ACT TO INCORPORATE
THE
BOARD OF TRADE, CHICAGO.

Be it enacted by the People of the State of Illinois, represented in the General Assembly:

SECTION 1. That the persons now composing the Board of Trade of the City of Chicago are hereby created a body politic and corporate, under the name and style of the "BOARD OF TRADE OF THE CITY OF CHICAGO," and by that name may sue and be sued, implead and be impleaded, receive and hold property and effects, real and personal, by gift, devise or purchase, and dispose of the same by sale, lease or otherwise; said property so held not to exceed at any time the sum of two hundred thousand dollars; may have a common seal, and alter the same from time to time, and make such Rules, Regulations and By-Laws from time to time as they may think proper or necessary for the government of the corporation hereby created, not contrary to the laws of the land.

Corporate title.

Limit of property.

Seal.

Power to adopt rules, regulations and by-laws.

SEC. 2. That the Rules, Regulations and By-Laws of the said existing Board of Trade shall be the Rules and By-Laws of the corporation hereby created, until the same shall be regularly repealed or altered; and that the present officers of said Association known as the "Board of Trade of the City of Chicago" shall be the officers of the corporation hereby created, until their respective offices shall regularly expire, or be vacated, or until the election of new officers according to the provisions hereof.

Present rules, regulations and by-laws to govern until duly changed.

Officers. SEC. 3. The officers shall consist of a President, one or more Vice-Presidents, and such other officers as may be determined upon by the Rules, Regulations or By-Laws of said corporation. All of said officers shall respectively hold their offices for the length of time fixed upon by the Rules and Regulations of said corporation hereby created, and until their successors are elected and qualified.

Rules, regulations and by-laws. SEC. 4. The said corporation is hereby authorized to establish such Rules, Regulations and By Laws for the management of their business, and the mode in which it shall be transacted, as they may think proper.

Manner of holding elections. SEC. 5. The time and manner of holding elections and making appointments of such officers as are not elected, shall be established by the Rules, Regulations and By-Laws of said corporation.

Power to admit and expel. SEC. 6. Said corporation shall have the right to admit or expel such persons as they may see fit, in manner to be prescribed by the Rules, Regulations and By-Laws thereof.

Committees of Arbitration and Appeals. SEC. 7. Said corporation may constitute and appoint Committees of Reference and Arbitration, and Committees of Appeals, who shall be governed by such rules and regulations as may be prescribed in the Rules, Regulations or By-Laws for the settlement of such matters of difference as may be voluntarily submitted for arbitration by members of the Association, or by other persons not members thereof, the acting chairman of either of said committees, when sitting as arbitrators, may administer oaths to the parties and witnesses, and issue subpœnas and attachments, compelling the attendance of witnesses, the same as justices of the peace, and in like manner, directed to any constable to execute.

Executions upon awards. SEC. 8. When any submission shall have been made in writing, and a final award shall have been rendered, and no appeal taken within the time fixed by the Rules or By-Laws, then, on filing such award and submission with the Clerk of the Circuit Court, an execution may issue upon such award as if it were a judgment rendered in the Circuit Court, and such award shall thenceforth have the force and effect of such a judgment, and shall be entered upon the judgment docket of said court.

Bonds.

SEC. 9. It shall be lawful for said corporation, when they shall think proper, to receive and require of and from their officers, whether elected or appointed, good and sufficient bonds for the faithful discharge of their duties and trusts; and the President or Secretary is hereby authorized to administer such oaths of office as may be prescribed in the By-Laws or Rules of said corporation. Said bonds shall be made payable and conditioned as prescribed by the Rules or By-Laws of said corporation, and may be sued and the moneys collected and held for the use of the party injured, or such other use as may be determined upon by said corporation.

Oaths of office.

Suits upon bonds.

Inspectors, gaugers and weighers.

SEC. 10. Said corporation shall have power to appoint one or more persons, as they may see fit, to examine, measure, weigh, gauge or inspect flour, grain, provisions, liquor, lumber, or any other articles of produce or traffic commonly dealt in by the members of said corporation; and the certificate of such person or inspector as to the quality or quantity of any such article, or their brand or mark upon it, or upon any package containing such article, shall be evidence between buyer and seller of the quantity, grade or quality of the same, and shall be binding upon the member of said corporation, or others interested, and requiring or assenting to the employment of such weighers, measurers, gaugers or inspectors; nothing herein contained, however, shall compel the employment, by any one, of any such appointee.

Certificates, evidence of quantity, grade or quality.

Employment of appointees not obligatory.

Fines

SEC. 11. Said corporation may inflict fines upon any of its members, and collect the same, for breach of its Rules, Regulations or By-Laws; but no fine shall exceed five dollars. Such fines may be col-

Shall not exceed five dollars.

lected by action of debt, before a justice of the peace, in the name of the corporation.

Limitation of powers. SEC. 12. Said corporation shall have no power or authority to do or carry on any business excepting such as is usual in the management of boards of trade or chambers of commerce, or as provided in the foregoing sections of this bill.

WM. R. MORRISON,
Speaker of the House of Representatives.

JOHN WOOD,
Speaker of the Senate.

Approved February 18, 1859.
WM. H. BISSELL.

UNITED STATES OF AMERICA, }
STATE OF ILLINOIS. } SS.

Certificate. I, O. M. HATCH, Secretary of State of the State of Illinois, do hereby certify that the foregoing is a true copy of an enrolled law now on file in my office.

[SEAL] In witness whereof I have hereunto set my hand and affixed the Great Seal of State, at the city of Springfield, this seventh day of March, A.D. 1859.

O. M. HATCH,
Secretary of State.

RULES, BY-LAWS,

AND

INSPECTION REGULATIONS

OF THE

BOARD OF TRADE OF THE CITY OF CHICAGO.

IN FORCE JANUARY 1, 1882.

OBJECTS.

The objects of the Association are: To maintain a Commercial Exchange; to promote uniformity in the customs and usages of merchants; to inculcate principles of justice and equity in trade; to facilitate the speedy adjustment of business disputes; to acquire and to disseminate valuable commercial and economic information, *and, generally*, to secure to its members the benefits of coöperation in the furtherance of their legitimate pursuits. **Preamble.**

In accordance with the franchises conferred by its Charter, and to accomplish the objects sought by the Association in its organization,

THE BOARD OF TRADE OF THE CITY OF CHICAGO

has adopted, for its direction and government, the following Rules, By-Laws and Regulations.

GENERAL RULES.

RULE I.

GOVERNMENT AND ELECTIONS.

SECTION 1. The government of the Board of Trade of the City of Chicago, except as to the management of its real estate and such portions of its building, to be erected, as are not occupied by the Association for its own uses, is hereby vested in a President, two Vice-Presidents, and fifteen Directors, who — including the President and Vice-Presidents — shall be known as the BOARD OF DIRECTORS, all of whom shall have been members of the Association for at least one year next preceding their election. The President, one Vice-President, and five Directors shall be elected annually. The President shall hold his office for the term of one year, or until his successor is elected and qualified; the Vice-Presidents, in like manner, shall hold their offices for the term of two years, and the Directors, in like manner, for the term of three years. Ten members of the Board of Directors shall constitute a quorum for the transaction of business, but a less number may adjourn from time to time to any fixed date preceding the next regular meeting of the said Board.

Government of the Association, how vested.

Board of Directors — qualifications.

Terms of office.

Quorum.

SEC. 2. The control and management of the real estate owned by the Board, and such parts of the Exchange Building, to be erected, as are not occupied by the Association for its own uses, shall be vested in a Board of Real Estate Managers, consisting of the President of the Board of Trade and four

Real Estate — management of.

Managers.

Qualifications. **Election of.** **First Board.** other persons of like qualifications as are prescribed for Directors, two of whom shall be elected annually on the second Monday of March in each year, after 1882, to serve for two years, or until their successors are elected and qualified. *Provided*, That on the 11th day of October, 1881, there shall be elected by the Association two persons as members of said Board of Real Estate Managers to serve until the third Monday in March, 1883, and two persons as members of said Board to serve until the third Monday in March, 1884. **Bonds.** The individual members of said Board of Real Estate Managers shall each be required to file a good and sufficient bond, with sureties, in the penal sum of one hundred thousand dollars, conditioned on the faithful and honest discharge of the duties and trusts imposed upon them by virtue of their office as a member of said Board of Real Estate Managers. Said bonds shall be made to the Board of Trade of the City of Chicago, and shall be filed with and approved by the Board of Directors before the party shall assume the duties of his office.

Committees of Arbitration and Appeals. SEC. 3. There shall also be elected by the members of the Association a Committee of Arbitration and a Committee of Appeals, consisting of ten members each, who shall hold their respective offices for the period of two years. Five members of each committee shall be elected annually. **Qualifications.** The qualifications for election to either of these committees shall be the same as for the office of Director. No person shall, at the same time, be a member of both committees.

Annual election. SEC. 4. The annual election for all elective officers not otherwise provided for, shall be held in the Exchange Hall on the first Monday after the second day of January in each year, between the hours of ten o'clock A.M. and two o'clock P.M., and all voting shall be by ballot. The official term of all officers shall commence on the Monday succeeding their election.

Commencement of official term.

SEC. 5. For President and Vice-Presidents, a majority of all the votes cast shall be necessary to a choice; but for all other elective officers, a plurality shall elect.

Requirements of an election.

SEC. 6. In case of failure to elect any officer voted for on the first trial, another election, in like manner, shall be held on the succeeding day, and if there shall again be a failure to elect, then, upon a third trial, held in like manner, on the day following, a plurality shall elect.

Failure to elect.

Subsequent trials.

RULE II.

DUTIES OF THE PRESIDENT.

SECTION 1. It shall be the duty of the President to act as the general executive officer of the Association, of the Board of Directors, and of the Board of Real Estate Managers, respectively; to preside at all meetings of either of these bodies, and to direct the proceedings of each in accordance with the Rules, By-Laws and Rules of Order governing the same; to call special meetings of the Board of Directors, Board of Real Estate Managers, and of the Association; and also, upon the written request of twenty-five members, to call special meetings of the Association, which shall be done by causing notice of the same to be publicly announced on 'Change; *Provided*, such request shall state the object for which such meeting is to be called, and is made at least three business days preceding the said meeting.

Executive powers.

To act as presiding officer.

To call special meetings.

SEC. 2. It shall be the duty of the President to preserve order and proper business decorum in the Exchange Rooms of the Association during all business hours; and in case any member or other person shall be guilty of any disorderly, boisterous or offensive conduct while in the Exchange Rooms,

To preserve order in the Exchange Room.

Penalty for disorderly conduct.

he shall for that offense be suspended from the privilege of admission to said rooms for such time as may be determined by the President, subject, however, to appeal to the Board of Directors, but pending such appeal he shall remain so suspended if the President shall so elect.

Power to fill vacancies and to appoint committees.

SEC. 3. It shall be the duty of the President to temporarily fill any vacancy which may occur in any appointive office of the Association, and to appoint all committees whose appointment is not otherwise provided for.

RULE III.

VICE-PRESIDENTS — DUTIES.

First and second Vice-Presidents.

Respective duties.

SECTION 1. The Vice-President serving upon the last year of his official term shall be the first Vice-President, and the Vice-President serving upon the first year of his official term shall be the second Vice-President. It shall be the duty of the Vice-Presidents, respectively, in this order, to perform the duties of the President, in case of his absence or disability.

RULE IV.

POWERS AND DUTIES OF THE BOARD OF DIRECTORS.

Business and financial concerns, how managed.

SECTION 1. All the business and financial concerns of the Association, except such as relate to the care and management of its Real Estate, and such portions of the Exchange building, to be erected, as shall not be occupied by the Board of Trade for its own uses, shall be managed and conducted (in accordance with the Charter, Rules, Regulations and By-Laws of the Association) by or under the direction of the Board of Directors.

SEC. 2. The Board of Directors shall, on the Tuesday succeeding each annual election, or as soon thereafter as may be practicable, appoint a Secretary, an Assistant Secretary, a Treasurer, and such Inspectors, Gaugers, Weighers, Measurers, and other officers, clerks, assistants and employés as they may consider necessary for the purposes of the Association, and they may establish such regulations for the direction and government of such appointees as they may think proper; and may fix their compensation, and determine by whom the same shall be paid. The term of office of all such appointees shall commence on the Tuesday succeeding their appointment, or at such other time as the Board of Directors may designate, and shall continue for one year, or until their successors are appointed and assume their duties; but all such appointments shall be revocable at the will and pleasure of the said Board.

Appointment of officers and employés.

Compensation of officers and appointees.

Terms of appointed officers.

Appointments revocable.

SEC. 3. The Board of Directors may require of all appointees an oath to well and faithfully perform all and singular the duties of their office, and a good and sufficient bond to secure such performance.

Oath of office.

Bonds.

SEC. 4. The Board of Directors shall hold stated meetings every Tuesday, except when Tuesday shall fall upon a legal holiday, in which case the meeting for that day may be omitted.

Stated meetings of Directors.

SEC. 5. The Board of Directors shall cause to be announced on 'Change all appointments of public concern which they shall make, and all revocations of the same; and at every annual meeting they shall make a full report of receipts and expenditures, properly classified, and an exhibit of the financial affairs, property and general condition of the Association. They shall, previous to the annual meeting of the Association, assess on each of the members of the Association a *pro rata* amount, which in their judgment will be sufficient, in the aggregate, to meet all estimated expenditures of the Association for the ensuing fiscal year, and they shall, at the annual meeting, report to the Association the *pro rata* amount thus assessed.

Announcement of appointments and revocations.

Annual report of receipts and expenditures.

Assessments.

Rooms. SEC. 6. The Board of Directors shall provide suitable and convenient Exchange, Reading and other necessary rooms and offices for the purposes of the Association, and they shall cause the same to be kept in a comfortable, neat and orderly condition. They shall, on all business days, cause the rooms to be **Rooms to be open.** open for the admission of members of the Association from 9½ o'clock A.M. to 1 o'clock P.M. From 11 o'clock A.M. to 1 o'clock P.M. the main EXCHANGE HALL shall be set apart and devoted to the **General Exchange.** purposes of a GENERAL EXCHANGE. They shall have **Power to regulate use of rooms.** power to make all needful rules and regulations in regard to the use of such rooms, and to enforce the same by the necessary penalties or discipline.

Causes for suspension. SEC. 7. When any member of the Association has failed to comply promptly with the terms of any business contract or obligation, and has failed to equitably and satisfactorily adjust and settle the same; or when any member has failed to promptly comply with and fulfill the award of any Committee of Arbitration or Committee of Appeals, made in conformity with the Rules, Regulations and By-Laws of the Association, he shall, upon admission or proof of such delinquency before the Board of Directors, be by them suspended from all privileges of the Association until all his outstanding obligations to members of the same shall have been adjusted and settled, when he may, upon application, be reinstated. **Applications for reinstatement.** Notice of all applications for relief from suspension, under the provisions of this section, shall be posted upon the bulletin of the Exchange for at least one week prior to the hearing of any such application by the Board of Directors, when, if no further just claims shall be filed against the said **Reinstatement of members.** applicant, he may be so reinstated; and if the Board of Directors shall be satisfied that such failure was merely from financial inability or misfortune, such member, having so adjusted or settled such outstanding obligations, *shall* be reinstated; and such

A bar to further discipline.

reinstatement, in either case, shall thereafter serve as a bar to any further discipline by the Association, on account of any claims maturing at a date prior to the reinstatement of the said applicant.

Improper conduct.

Refusal to adjust contracts.

Refusal to comply with awards.

Violation of Rules.

False and fictitious purchases or sales.

Dishonorable conduct.

Penalty.

Vote necessary to discipline.

SEC. 8. When any member of the Association shall be guilty of improper conduct of a personal character in any of the rooms of the Association, or when any member shall be guilty of a willful violation of any business contract or obligation, and shall neglect or refuse to equitably and satisfactorily adjust and settle the same; or when any member shall willfully neglect or refuse to comply promptly with the award of any Committee of Arbitration or Committee of Appeals, rendered in conformity with the Rules, Regulations and By-Laws of the Association; or when any member shall violate any of the Rules, Regulations or By-Laws of the Association; or when any member shall be guilty of making or reporting any false or fictitious purchases or sales; or when any member shall be guilty of any act of bad faith, of any attempt at extortion, or of any other dishonorable or dishonest conduct; he shall be censured, suspended or expelled by the Board of Directors, as they may determine, from the nature and gravity of the offense committed. A majority of a quorum sitting at a regular or adjourned meeting of the Board of Directors shall be necessary to censure or suspend, and an affirmative vote of at least twelve members of the Board of Directors shall be necessary to expel.

Charges for establishing fictitious market.

SEC. 9. If, during the progress of any arbitration or other investigation before any committee of the Association, it shall appear to the satisfaction of such committee that any member of the Association has been guilty of attempting to establish a fictitious market, as a basis for extorting unreasonable damages, or for the purpose of avoiding payment of just obligations, the said committee shall thereupon make formal charges to that effect, against the member whereupon the member thus implicated shall be notified to appear before the Board of Directors in manner as provided by section 14 of this rule, and if found guilty the said member shall be suspended or expelled, as hereinbefore provided.

Punishment, if sustained.

Professional counsel not allowed.

SEC. 16. In investigations before the Board of Directors, or before any committee of the Association, no party shall be allowed to be represented by professional counsel.

Discharge in bankruptcy.

SEC. 17. When a member against whom are pending no complaints or charges preferred by a member of the Association, or who is not under sentence of suspension, shall have been duly discharged from his legal responsibilities or debts by a court of bankruptcy, he shall not thereafter be liable to discipline on account of such obligations; *provided*, the institution of proceedings in bankruptcy shall in nowise affect the action of the Board of Directors in matters of discipline, brought before said Board before a final discharge in bankruptcy shall have been granted; nor shall a discharge in bankruptcy affect subsequent proceedings, in the way of discipline, before said Board, for immoral or dishonest transactions, occurring prior to said discharge.

Proceedings in bankruptcy.

Subsequent proceedings.

Standards of grades.

SEC. 18. It shall be the duty of the Board of Directors, as occasion may require, to fix and establish standards of grades or qualities for Flour, Grain, Provisions, Liquors, Lumber, and any other articles or commodities dealt in by the members of the Association; and the certificate of any Inspector, Weigher, Measurer, or Gauger, appointed by the said Board, as to the quality or quantity of any such articles, or his brand or mark upon it, or upon any package containing such articles, shall be evidence between buyer and seller of the quality, grade or quantity of the same, and shall be binding upon the members of the Association, or others interested or requiring or assenting to the employment of such Inspectors, Gaugers, Weighers or Measurers; nothing herein

Certificates.

contained, however, shall compel the employment, by any one, of any such appointees. **Inspection not compulsory.**

Standing Committees. SEC. 19. It shall be the duty of the Board of Directors, upon the nomination of the President, to appoint such Standing Committees from their own number as they may deem necessary. The Inspection Committees, for the purpose of having the proper branches of trade represented, may be selected in part or wholly from the other members of the Association. All such committees, however, shall be fully under the control of the said Board of Directors. The said Board of Directors shall, in like manner, appoint all delegates to the National Board of Trade; and all representatives to other deliberative gatherings in which the Association may be entitled to a voice, and to which it may desire representation; and such delegates and representatives may be appointed wholly or in part from the membership of the Association not members of the Board of Directors. **Delegates to National Board.** **Other representatives.**

Legal advice. SEC. 20. The Board of Directors may employ such legal advice and assistance as they may deem necessary for the purposes of the Association.

Absence or disability of presiding officers. SEC. 21. In case of absence or disability of the President and both Vice-Presidents, it shall be the duty of the Board of Directors to elect from their number a temporary chairman, who, in addition to his duties as Chairman of the Board of Directors, shall also temporarily perform all other duties devolving upon the President. **Temporary chairman.**

Special meetings of the Association, how called. SEC. 22. The Board of Directors shall have power to call special meetings of the Association upon such notice and for such purposes as they may deem proper. All calls for special meetings of the Association shall state the specific object of such meetings, and no other business than that for which a special meeting was called shall be considered or transacted at any such meeting.

SEC. 23. It shall be the duty of the President,

Tellers of election. **Duties.** **Quorum.** **Returns in writing.** **Preservation of ballots.** **May be subsequently examined.**

prior to any election to be held by the Association, to appoint a sufficient number of tellers, who shall have charge of the ballot boxes and poll lists of the Association, and who shall receive, consecutively, and place the same in the ballot box, all ballots of members who shall be in good and regular standing, who shall have paid all dues and assessments. They shall keep a record of all members voting, and opposite each name shall place the number of the ballot deposited by said member. Three of the tellers shall constitute a quorum for receiving and recording the votes. No ballot box shall be opened, nor shall any votes be counted, except in the presence of at least four of their number. They shall make all returns in writing to the Secretary of the Association, duly signed by at least four of their number, and the Secretary shall preserve all ballots for the period of at least two months, for further examination, if the same shall be ordered by the Board of Directors, to verify the correctness of the returns of said tellers.

Absence of Directors. **Forfeiture of office of Directors.**

SEC. 24. In case any member of that body shall absent himself from six consecutive regular meetings of the Board of Directors, without having been previously excused, or without communicating to the President, in writing, a good and sufficient excuse for his absence, or a resignation of his office, the Board of Directors shall have power to declare the office of said Director vacant, and to immediately order a special election by the Association to fill said vacancy.

Special meetings of Directors. **How called.** **Sufficient notice.**

SEC. 25. Special meetings of the Board of Directors may be convened by order of the President, or by written request of any five members of the said Board, addressed to the Secretary. Such meetings may be called by public notice announced on 'Change, or by service of personal or written notice by the Secretary, or by any of his assistants, upon the members of the said Board. A written notice left at the usual place of business of any member of the said Board of Directors shall be a sufficient notice in case of meetings called by service of personal or written notice.

RULE V.

DUTIES OF BOARD OF REAL ESTATE MANAGERS.

SECTION 1. It shall be the duty of the Board of Real Estate Managers to have and exercise a general supervision, management and control of the interests of the Association in all matters pertaining to its Real Estate and the building to be erected thereon, both during the course of construction of said building, and also thereafter. They shall hold stated meetings at such times and places as they may agree upon by resolution duly entered upon their records, and may hold special meetings on the call of the President, who *shall* call such special meetings on the request in writing of at least three members of said Board. Three of their number shall constitute a quorum for the transaction of business. They shall cause a correct record to be kept of all their official proceedings, and at each annual meeting of the Association (or oftener if required by vote of the Association) they shall make a full report of their proceedings since the previous report, and of the affairs of the Real Estate and building under their charge. They shall have power to appoint and employ suitable persons as clerks, superintendents, or to any other necessary service or duty, and to fix the compensation of such appointees and pay the same from any funds within their control, and shall themselves be entitled to receive a compensation for their personal services not exceeding the sum of twenty-five hundred dollars per annum, during the time occupied in the construction of said building, all the expenditures of money for such compensation to be from and charged against funds appropriated to or procured for the purpose of erecting said building. Within thirty days after

Control and management of real estate and building.

Meetings.

Quorum Records.

Reports.

Employés.

Temporary salary.

First Board, when elected.

the election of the four members of said Board of Real Estate Managers, to be had on the 11th day of October, 1881, and when said Board of Real Estate Managers shall be duly organized for business, there shall be paid to the said Board or placed within its control by the Board of Directors of the Board of Trade, the sum of one hundred thousand dollars of the funds belonging to the Board of Trade, as a basis of a fund to be used and expended by said Board of Real Estate Managers in the construction of a building for the use and occupancy of the Board of Trade as an exchange and for other purposes, including the rental of such portions of said building as are not for the time being needed for the uses of the Board of Trade itself. All moneys received by the Board of Real Estate Managers for account of or belonging to the Board of Trade or as proceeds of bonds sold shall be deposited with the Treasurer of the Association; to be kept by him in an account separate from moneys deposited by the Secretary of the Association, and moneys so deposited shall be subject to the order of the President of the Board, countersigned by some designated member or appointee of said Board of Managers.

Fund of $100,000.

Moneys, how deposited.

How drawn.

Building.

SEC. 2. The Board of Real Estate Managers having received from the funds of the Board of Trade the sum of one hundred thousand dollars, as provided by section 1 of this rule, and having procured and accepted plans and estimates for the construction of an exchange building, to be erected on the real estate owned by the Board of Trade, the said Board of Managers shall be and are hereby authorized, in order to procure sufficient additional funds to complete said building, to borrow money on the credit of the Board of Trade of the city of Chicago, and the security of its real estate and building; and in order to perfect the security for money so borrowed, the President and Secretary of the Board of Trade are hereby empowered and directed,

Plans and estimates.

Authority to borrow money.

on the request of the Board of Real Estate Managers, to execute and deliver to some suitable person or corporation, to be named by the said Board of Managers, a deed of the real estate owned by the Board of Trade, and the building in process of construction thereon, the condition of which deed shall be expressly stated to be that said property is *held in trust* as a security for the payment of the principal and interest of certain bonds issued or to be issued by the Board of Trade, not exceeding an aggregate amount stated in said deed, the proceeds of which are to be applied to the completion of a building on the real estate so conveyed. Provision shall also be made in said deed that the said building shall at all times be kept insured, at the expense of the Board of Trade, and for the benefit or security of the holders of the bonds, issued as herein provided, to an amount at least equal to the amount of such outstanding bonds, the policies for such insurance to be drawn for the benefit of such bondholders, and deposited in escrow with said trustee. Provision shall also be made in said deed that in the event of all the bonds secured by it being paid by the Board of Trade, or its successors or assignees, then the property so conveyed shall be reconveyed to the Board of Trade, or to its successors or assignees. And such provision shall also be made in said deed as shall seem proper to said Board of Managers for the sale of said property by said trustee named in said deed in case of default of payment of the principal or interest of said bonds, or any of them, as the same shall become due.

Deed of Trust.

Terms of Trust.

Insurance.

Policies to be deposited in escrow.

Release of Trust.

Provision in case of default.

SEC. 3. The President and Secretary of the Board of Trade having executed and delivered the deed referred to in section 2 of this rule, they shall, on the request of the Board of Real Estate Managers, sign and issue to the said Board the bonds contemplated therein, which bonds shall be sold, negotiated or realized upon in such manner as the said Board of Managers may deem for the best interest

Bonds, how issued. How disposed of.

Denominations of. of the Board of Trade. Said bonds shall be in denominations of one hundred, two hundred and fifty, five hundred or one thousand dollars each, as purchasers may prefer; Interest on. they shall draw interest, payable semi-annually, at such rate per annum, not exceeding six per cent, as the Board of Real Estate Managers may deem for the best interests of the Board of Trade; Redemption of. they shall be made redeemable at the pleasure of the Board of Trade after ten years, and payable fifty years from their date; principal and interest to be made payable at such place as may be designated on the face of each bond.

Leasing of offices, etc. SEC. 4. The Board of Real Estate Managers shall have power to lease in their discretion all the rooms in said Exchange building not required for the use of the Board of Trade, and the leases shall be executed Leases, how executed. on behalf of the Board of Trade by the President and Secretary thereof, and under the Seal of the Corporation."

RULE VI.

DUTIES OF THE SECRETARY.

Records. SECTION 1. The Secretary, under the direction and control of the Board of Directors, shall keep a journal of the proceedings of the Association; Property. take charge of the seal, books, papers, and property belonging to the Association; keep an account of the imports and exports of the city; Statistics. collect and record valuable statistical information pertaining to the commercial, mercantile and manufacturing interests of the city of Chicago, and post the same on 'Change, daily; Annual report. and on or about the first of January in each year he shall make to the Association a full report of the business of the city for the preceding year, ending December 31, embracing such other information, in his possession, as may be of interest to the members. He shall furnish to the Chairman of every special committee a copy of the resolutions whereby such committee shall have been appointed, and, under the direction of the President, he shall give notice of any meetings of the Board of Directors or of the Association. He shall conduct the correspondence of the Association, and read such records or papers as the presiding officer may direct; shall attend meetings of Committees of Arbitration or Appeals, and of the Board of Directors, and keep an official record of their proceedings, give notice when their services are required, issue the necessary notices and papers to parties, and deliver copies of all awards or findings. He shall collect all moneys due to the Association for assessments, fines, fees, or otherwise, and pay the same to the Treasurer; shall keep his office open during usual business hours, shall see that the rooms and property of the Association are kept in good order, and shall perform such other duties as the Board of Directors may from time to time direct.

Notice to committees.

Correspondence.

Attend meetings of committees.

Collections.

Other duties.

SEC. 2. It shall be the duty of the Secretary to furnish to all inspectors, gaugers, weighers and measurers, appointed by the Board of Directors, official certificates of their appointment, bearing the signatures of the President and Secretary and the seal of the Association. Such certificate shall specify their duty and the time for which they are appointed, and also that such appointments are revocable at the will and pleasure of the said Board.

Certificates of appointment.

Appointments revocable.

DUTIES OF THE ASSISTANT SECRETARY.

SEC. 3. The Assistant Secretary shall perform such duties pertaining to the office of the Secretary as the Directors or the Secretary shall order, and in the temporary absence or disability of the Secretary shall perform the duties of the Secretary.

To assist in performing the duties of Secretary.

RULE VII.

DUTIES OF THE TREASURER.

Shall receive for the Association. **How disbursed.** **From the Board of Real Estate Managers.** **How disbursed.** **Reports.** **Books accessible to Directors.**

SECTION 1. The Treasurer shall receive from the Secretary deposits of funds belonging to the Association, and shall disburse the same on the order of the Secretary, countersigned by the President. He shall also receive from the Board of Real Estate Managers all moneys deposited by said Board; he shall keep such deposits in a separate account from moneys deposited by the Secretary, and shall disburse the same on the order of the President countersigned by some designated member or appointee of said Board of Managers. He shall make a full report to the Association at its annual meeting of all receipts and disbursements by him of funds received for either of these accounts, and of the balances, if any, remaining in his hands. The accounts of the Treasurer shall be kept in books belonging to the Association, which books shall at all times be open for the examination of the Board of Directors or any committee of said Board.

RULE VIII.

DURATION OF OFFICES.

Present officers. **New officers.**

SECTION 1. The present officers of the Association shall continue in their respective offices during the term for which they were elected. And the election held by the Association on March 26, 1875, for five directors to serve until the commencement of the official year in 1878, is hereby ratified and confirmed.

RULE IX.

COMMITTEES OF ARBITRATION AND APPEALS.

Duties of Committee of Arbitration.

Evidence.

How to construe rules.

SECTION 1. It shall be the duty of the Committee of Arbitration to hear and determine all cases of disputed claims voluntarily submitted for their adjudication by members of the Association. All evidence in such cases shall be taken under oath or affirmation, and shall be duly recorded. In all such adjudications the committee shall construe all Rules, Regulations and By-Laws of the Association as being designed to secure justice and equity in trade; and all awards or findings shall be made in conformity therewith, and in accordance with the laws of the land.

Stenographic reports.

In case either party shall so demand, by previous notice given to the Secretary, the testimony and proceedings of the Committee of Arbitration shall be taken by a stenographer, the cost of which shall be assessed by the committee as in cases of other costs incurred.

Appeal to Committee of Appeals, how made.

SEC. 2. Any award or finding of the Committee of Arbitration may be appealed from, and the case may be carried to the Committee of Appeals for revision; *Provided*, notice of such appeal shall be given to the Secretary, in writing, within two business days after such award or finding shall have been delivered to the parties in controversy.

Committee of Appeals — duties.

Its awards not subject to revision.

Regularity.

SEC. 3. It shall be the duty of the Committee of Appeals to review such cases as may be appealed from the Committee of Arbitration and formally brought before it, and its awards or findings shall be final and binding, and shall not be subject to revision by any other tribunal of the Association; *Provided*, the Board of Directors may determine, from the Record and other evidence, as to the proper constitution of any committee and as to the regularity of

New evidence. **Remanding cases.** **Final awards.** **How governed.**

its proceedings. The said Committee of Appeals shall receive such new evidence as may be offered under oath or affirmation; and if, in its judgment, evidence is produced which will justify a rehearing of the case by the Committee of Arbitration, it shall remand the case to the said Committee of Arbitration for a new trial. Any final award or finding of the Committee of Appeals shall be based on the record of the Committee of Arbitration, and shall be made in like manner as prescribed by section 1 of this rule.

Quorum. **Number necessary to concur in an award.**

SEC. 4. Five of either of these committees shall be a quorum for the transaction of business, and a majority decision of such quorum shall be binding.

Awards, how rendered. **When rendered.** **Official records open to members.**

SEC. 5. The Committee of Arbitration and the Committee of Appeals shall each render their awards or findings in writing, through the Secretary of the Association, within two business days after their decision shall have been made. Such awards or findings shall be signed by the Chairman of the Committee, and shall be certified by the Secretary, under the seal of the Association. The official record and decisions of these committees, and all other records of the Association, may be inspected by any member of the Association, upon application to the Secretary.

Vacancies, how filled. **Special Committees of Arbitration, how formed and governed.**

SEC. 6. When, from absence or disqualification of regular members, either the Committee of Arbitration or Appeals cannot be formed, the parties in controversy shall be allowed to fill vacancies with any member or members of the Association willing to serve (not being of the other committee), on whom they may agree; or if such parties are unwilling to submit their case to the Committee of Arbitration, they may choose three or more members (willing to serve, and not being of the Committee of Appeals), whom they may agree upon; such agreement, in either case, to be communicated to the Secretary in writing, signed by all the parties in controversy. A majority award or finding of any such committee shall be binding, and any award or finding of committees thus formed shall be made under the same rules and shall have the same effect as if made by the regular committees, respectively.

Oath of members of Committees.

SEC. 7. Before entering upon the duties of their office the members of any Committee of Arbitration or Committee of Appeals shall be required to take or subscribe to the following oath or affirmation, viz: "You do solemnly swear (or affirm) that you respectively will faithfully and fairly hear and examine all matters of controversy which may come before you during your tenure of office, and that you will in all cases make just and equitable awards or findings upon the same, in conformity with the Rules, Regulations, and By-Laws of the Association, and according to the evidence, to the best of your understanding: so help you God."

Administration of oaths to witnesses.

SEC. 8. The Chairman or Acting Chairman of any Committee of Arbitration or Appeals shall have power to administer suitable oaths to the parties and witnesses, and to issue citations to witnesses.

Submissions, how made.

Agreement to abide by award.

Postponement of trial.

Trifling matters not to be entertained.

SEC. 9. Parties desiring the services of either of the foregoing committees shall notify the Secretary to that effect in writing, and before the hearing of the case, shall file an agreement with him, signed by the parties to the controversy, binding themselves to abide, perform and fulfill the final award or finding which shall be made touching the matter submitted, without recourse to any other court or tribunal. Neither party shall postpone the trial of a case longer than ten days after it has been submitted, unless good cause can be shown therefor, satisfactory to the committee. Trifling and unimportant matters shall not be entertained by the Committee of Arbitration. Any member of a firm may execute said agreement on behalf of such firm.

Fine of members of Committee.

SEC. 10. Members of the Committees of Arbitration or Appeals failing to attend when their services are required may be fined, for the use of the Association, three dollars for each default, unless a satisfactory excuse shall be made to the committee.

Fees.

SEC. 11. The fees for arbitration, under the Rules, By-Laws and Regulations of the Association, shall be as follows:

For the benefit of the committee, for each case where the amount in controversy shall be under $500	$10 00
For the benefit of the committee, for each case where the amount in controversy shall be from $500 to $1,000	15 00
For the benefit of the committee, for each case where the amount in controversy shall be from $1,000 to $1,500	20 00
For the benefit of the committee, for each case where the amount in controversy shall be from $1,500 to $2,500	25 00
For the benefit of the committee, for each case where the amount in controversy shall be from $2,500 upward	50 00

The fees, as above, shall be paid in advance, to the Secretary, by the party bringing the case.

Fees on appeals.

SEC. 12. The fees of the Committee of Appeals shall be the same as the fees in the same case before the Committee of Arbitration, and they shall be paid and disposed of in the same manner.

Failure to appear.

Costs for postponement.

SEC. 13. If parties to a controversy fail to appear at the time set for trial, or request a postponement, they may (if the case is postponed) be assessed with costs, by and for the use of the committee, in any sum, in the committee's discretion, not exceeding five dollars. The committee, however, may insist that the trial shall take place without postponement.

Fees on submissions by non-members.

SEC. 14. When neither of the parties in the controversy is a member of the Association, the aforesaid fees may be doubled. Fees, and all additional cases that may be incurred in the investigation of suits, shall be finally paid by either of the parties in the case, as may be decided by the committee hearing the same, and shall be included in their award or finding.

Costs to be assessed by committee.

RULE X.

SPECIAL COMMITTEES.

How appointed.

SECTION 1. Special Committees may be appointed by the Association or by the Board of Directors, to such service and in such manner as they may see fit, and it shall be the duty of every committee appointed by the Association, the President, or the Board of Directors, to act when properly called upon.

RULE XI.

MEMBERSHIPS.

Qualifications.

Application.

How admitted.

Initiation fee.

SECTION 1. Any person of good character and credit, and of legal age, on presenting a written application, indorsed by two members, and stating the name and business avocation of the applicant, after ten days' notice of such application shall have been posted on the bulletin of the Exchange, may be admitted to membership in the Association, upon approval by at least ten (10) affirmative ballot-votes of the Board of Directors, and upon payment of an initiation fee of five thousand dollars, or on presentation of a certificate of unimpaired or unforfeited membership, duly transferred, and by signing an agreement to abide by the Rules, Regulations and By-Laws of the Association, and all amendments that may, in due form, be made thereto.

Certificate of membership.

SEC. 2. Every member shall be entitled to receive a certificate of membership, bearing the corporate seal of the Association, and the signatures of the President and Secretary; and if the member in whose

When transferable. How transferable. Membership of deceased persons. Application to transfer to be posted.

name said certificate stands has paid all assessments due, and has against him no outstanding unadjusted or unsettled claims or contracts held by members of the Association, and said membership is not in any way impaired or forfeited, it shall, upon the payment of ten (10) dollars, be transferable upon the books of the Association to any person eligible to membership who may be approved by the Board of Directors, after due notice, by posting, as provided in section 1 of this rule. The membership of a deceased member shall be transferable, in like manner, by his legal representative. Prior to the transfer of any membership, application for such transfer shall be posted upon the bulletin of the Exchange for at least ten days, when, if no objection is made, it shall be assumed the member has no outstanding claims against him.

RULE XII.

MESSENGERS.

Conditions.

SECTION 1. The Board of Directors shall be authorized, under such restrictions, regulations and limitations as they may deem proper, to grant admission to the Exchange Rooms to messengers for members, such messengers not to be allowed to transact any business beyond communicating with their principal, and not to remain longer than is necessary for that purpose.

RULE XIII.

VISITORS.

Introduction. Restrictions.

SECTION 1. Visitors may be introduced to the Exchange Rooms upon such terms and for such time as the Board of Directors may from time to time determine. No person holding a visitor's ticket shall be permitted to negotiate or transact any business in the Exchange Rooms. For any violation of this rule the privilege of visiting the rooms may be forfeited.

RULE XIV.

COMPLIMENTARY TICKETS.

Under control of Board of Directors.

SECTION 1. The Board of Directors may authorize the issue of complimentary tickets of admission to the Exchange Rooms to such persons as they may designate; but no person holding such a ticket shall be entitled to vote, or to transact any business in the Exchange Rooms, except such as may be incident to the business on account of which the ticket was issued.

Restrictions.

RULE XV.

BROKERS; AND COMMISSION RATES.

Duties and responsibilities.

SECTION 1. Any person claiming to act as a broker shall be required to name his principal during the session of the Association at which the trade was made, or at the time the trade was made, if demanded; or, failing to do so, shall thereafter be held responsible for such trade, at the option of the party with whom he shall have made the same, and shall also be held liable for the acceptance of such trade by his principal.

Responsibility on trades made for parties not members of the Board.

SEC. 2. In case a member of the Association shall by himself, or through any person holding a clerk's ticket procured by him, make trades for or give the name of a corporation or of any person or firm not a member of the Board of Trade as the principal on any trade or contract, such member shall be held liable both for the acceptance of the same by the alleged principal, and for the faithful execution of the same under the rules of the Board of Trade by such principal.

Rates of commission on consignment. SEC. 3. The following rates of commission charges for receiving, selling and accounting for the various kinds of property herein named, being just and reasonable, are declared to be the established minimum rates of commissions governing the members of this Association so far as relates to the receiving, selling and accounting for the property named, viz:

Wheat and rye.	For selling car load lots of wheat and rye in store, free on board cars or vessels, on track, delivered, or to be shipped from any other point............	1 cent per bushel.
Corn and oats in store.	For selling car load lots of corn and oats in store...........	½ " "
Corn on track.	For selling corn by sample, on track.....................	1 " "
Oats otherwise than in store.	For selling car load lots of oats, free on cars or vessels, on track, delivered, or to be shipped from any other point,	1 " "
Barley in store.	For selling car load lots of barley in store..................	1 " "
Barley otherwise than in store.	For selling car load lots of barley, free on board cars or vessels, on track, delivered, or to be shipped from any other point,	1½ " "
Canal grain.	For selling canal boat loads of grain in store or afloat, or free on board vessels.......	½ " "
Flax seed.	For selling flax seed in bulk....	1 " "
	For selling flax seed in bags....	1½ " "
Clover seed.	For selling clover seed in car load lots.....................	1 per cent.
	For selling clover seed in less than car load lots..........	1½ " "
Timothy seed.	For selling timothy seed	1½ " "

For selling all other seeds......	2 per cent.	**Other seeds.**
For selling dressed hogs in car load lots	1½ “ “	**Dressed hogs.**
For selling dressed hogs in less than car load lots, not less than 1½ per cent, nor to exceed	2½ “ “	**Dressed hogs.**
For selling bran, shorts and mill-stuffs	$3½ per car.	**Mill-stuffs.**
For selling corn meal and mixed feed......................	$5 “ “	**Corn meal and feed.**
For selling broom corn.........	¼ cent per pound.	**Broom corn.**

Expenses to be charged. **Special contracts.**

In addition to the above, there shall be charged such legitimate expenses as are necessarily incurred in caring for the property and guarding the interests of both consignor and consignee. Nothing in this rule shall be so construed as to prevent any special agreement between consignor and consignee by which a higher rate of commission may be charged in special cases.

Commissions on purchase and sale or purchase and shipment.

SEC. 4. The following Schedule of Commissions is established for the government of members of the Association as the *minimum* rates of charges for the purchase and sale, or purchase and shipment, of the several commodities named, whether the property be purchased for an immediate or contracted for a future delivery; and whether the contract for purchase or sale be first in order in the transaction, to wit:

Charges to non-members.

In cases where the transaction is made by order or for account of parties who are not members of the Association:

For the purchase and sale of property in the Chicago market:

Grain.

On all kinds of Grain in lots of 5,000 bushels or more, ¼ of one cent per bushel.

Lard.

On Lard in lots of 250 tierces or more, 10 cents per tierce.

Mess Pork. On Mess Pork in lots of 250 barrels or more, 5 cents per barrel.

Meats. On Other Meats in lots of 50,000 pounds or more, ½ of one per cent.

Charges to fellow members. In cases where the transaction is made by order or for account of parties who are members of the Association, the minimum charge shall be one half the above rates, to wit:

For the purchase and sale of property in the Chicago market:

Grain. On all kinds of Grain in lots of 5,000 bushels or more, ⅛ of one cent per bushel.

Lard. On Lard in lots of 250 tierces or more, 5 cents per tierce.

Mess Pork. On Mess Pork in lots of 250 barrels or more, 2½ cents per barrel.

Meats. On Other Meats in lots of 50,000 pounds or more, ¼ of one per cent.

Purchase and shipment. For the purchase and shipment by vessel cargo:

Grain. On Wheat, Rye and Barley, ½ of one cent per bushel.

On Other Grain, ¼ of one cent per bushel.

For the purchase and shipment by rail:

On Grain of all kinds, ½ of one cent per bushel.

Provisions. For the purchase and shipment of Lard, Mess Pork and all other Meats, ½ of one per cent.

Brokerage. For brokerage where the name of the principal is given the day on which the transaction is made, and the broker thereafter ceases to be considered as the principal:

Grain. On all kinds of Grain, 25 cents per 1,000 bushels.

Lard. On Lard, 1 cent per tierce.

Mess Pork. On Mess Pork, ½ of one cent per barrel.

Meats. On Other Meats, 3 cents per 1,000 pounds.

Other charges. The above rates shall be the *minimum net* commission charges, and shall not include any charges paid or due upon the property or the transaction, such as storage, interest, insurance, inspection, or any other form of legitimate expense; and no rebate, drawback, division of commissions, or any other allowance, directly or indirectly, which shall in any way tend to reduce the net amount actually received for the transaction of such business shall be permitted or excused. All transactions made for the purpose of closing outstanding contracts shall be deemed a purchase or sale, as the case may be, and no such transaction shall be permitted to, in any way, modify the rates of commission or brokerage, as above established, for a purchase and sale; the intention and proper construction of this section is hereby declared to be that each purchase or sale with its opposite closing transaction, and each purchase and shipment, shall be charged and paid for at a rate of commission or brokerage not less than those herein provided. Higher rates may, however, be charged in cases where the parties may so agree, and in cases where property is carried for one or more days, and advances made, the commission merchant may make such additional charge as may, under the circumstances, be proper. No member of this Board shall do business for any party or parties not members thereof, on a salary, except at the rate of commissions prescribed by this rule.

Rebates, etc.

Higher rates by agreement.

Evasions by salaried compensation.

Any violation or evasion of the provisions of Sections 3 or 4 of this rule by a member of the Board of Trade shall be deemed and held to be an act of bad faith, a violation of the Rules of the Association, and conduct of so dishonorable a character as to render a member guilty thereof liable to the severest discipline authorized by the Rules of the Board of Trade; and any member so offending shall, upon complaint and admission or proof of guilt before the Board of Directors, be by them suspended or expelled from membership in the Association, as provided by Rule IV, but no such suspension from the privileges of the Board shall be for a less time than one month; and on a second complaint against

Penalties.

Suspension or expulsion.

Second conviction. a member and a second conviction, he *shall* be expelled. In all cases of conviction for a violation of this section, the name of the party so convicted shall be posted on the bulletin of the Exchange; said posting shall also state the measure of punishment ordered by the Board of Directors, and shall remain so posted from the day succeeding such conviction for the space of at least one week.

Reward for evidence of violation. The Board of Directors are hereby authorized and directed to pay from the funds of the Association the sum of five hundred (500) dollars, as a reward to any person, whether a member of the Board of Trade or otherwise, who shall present to said Board the first evidence that will, in the judgment of said Board, establish the fact that any particular member or members of the Board of Trade have been guilty of a violation of any of the provisions of sections 3 or 4 of this rule: *Provided*, that in the judgment of the Directors there has been no collusion between the parties to violate the rule for the purpose of obtaining the reward. **Evidence.** All evidence introduced must be from the personal knowledge of the party claiming the reward, and must be presented under oath before the Board of Directors, with opportunity given the accused to cross-examine all parties giving evidence against him or them.

RULE XVI.

ANNUAL MEETING.

One week after annual election. SECTION 1. The Association shall hold its Annual Meeting on the *second* Monday after the *second* day of January.

RULE XVII.

SPECIAL ELECTIONS.

Failure to elect, and vacancies.

SECTION 1. If from any cause an election of officers is not had at the regular Annual Election, or in case of the death, resignation or removal of the President, either of the Vice-Presidents, Directors, or members of either of the committees of Arbitration or Appeals, it shall be in the power of the Association to fill such vacancies for the remainder of the official term at any regular or called meeting thereafter: *Provided*, notice of said meeting and election shall have been announced on 'Change and published in two of the Chicago daily newspapers for at least three days immediately preceding such meeting.

Notice, how published.

RULE XVIII.

ANNUAL ASSESSMENT — WHEN DUE.

When due.

SECTION 1. When the Annual Assessment is made it shall be considered due; and any member neglecting or refusing to pay the same within thirty (30) days thereafter, may be excluded from the rooms of the Association until such assessment is paid; and all members failing to pay the assessments during the whole of any fiscal year of the Association shall be deemed to have relinquished their membership, and the same shall be forfeited, and such parties shall thereafter be readmitted only as new applicants. Payment of annual assessments by a member, while under suspension, shall not be construed as in any way affecting such suspension.

Delinquents excluded from the Exchange.

Forfeiture of membership for non payment of dues.

Suspended members.

RULE XIX.

APPROPRIATIONS.

Limitations.

SECTION 1. No appropriation of money or other property of the Association shall be made except to defray its legitimate business expenditures or to promote the purposes of its organization.

RULE XX.

IRREGULAR TRADING.

Limitation of time in trading for future delivery.

SECTION 1. No trade or contract for the future delivery of grain or provisions shall be made or offered to be made by members of the Association in the Exchange Room of the Board, nor in any of the public streets, courts or passages in its immediate vicinity, before 9.30 o'clock A.M. or after 2.30 o'clock P.M., nor on any Saturday after 1 o'clock P.M., nor on any day on which the Board shall hold no business session; it being the object and intent of this Rule that all such trading which may tend to the maintenance of a public market shall be confined within the hours above specified. On any alleged violation by a member of the Association of the provisions of this rule which shall be brought to the attention of the President of the Board by credible report, it shall be the duty of the President to cause said member to be summoned before the Board of Directors, and if the party shall be found guilty of such violation of the rules he shall be subject to the discipline provided by section 8 of Rule IV.

Violation of rule.

Penalty.

RULE XXI.

SMOKING.

SECTION 1. Smoking in the Exchange Rooms of the Association shall be deemed discourteous and offensive conduct, and the same is hereby prohibited. **Prohibited.**

RULE XXII.

SEAL.

SECTION 1. The Association shall have a Seal, bearing a figure of Justice, with a ship in the distance surrounded by the words "Board of Trade of the City of Chicago." **Description.**

RULE XXIII.

QUORUM.

SECTION 1. One hundred members of the Association shall constitute a quorum, but a smaller number shall have power to adjourn. **One hundred members a quorum.**

RULE XXIV.

MARGINS ON TIME CONTRACTS.

SECTION 1. On time contracts purchasers shall have the right to require of sellers, as security, ten (10) per cent margins based upon the contract price of the property bought, and further security, from time to time, to the extent of any advance in the market value above said price. **Protection to purchasers.** Sellers shall have the right to require as security from buyers ten (10) per cent margins on the contract price of the prop- **Protection to sellers.**

erty sold, and in addition, any difference that may exist or occur between the estimated legitimate value of any such property and the price of sale. All securities or margins shall be deposited, either with the Treasurer of the Association or with some bank duly authorized by the Board of Directors to receive such deposits; *provided*, such deposit shall not be made with any bank or banks to which the party calling for the said security or margin shall expressly object, at the time of making such call; but in such case the deposit shall be made with some duly authorized bank not thus objected to, or with the Treasurer of the Association, as the depositor shall elect.

Margins, where deposited.

Excepted depositories.

Bonds.

SEC. 2. All banks which may be appointed to act as depositories for securities or margins shall execute and file with the Secretary of the Association a good and sufficient bond, with sureties, to be approved by the Board of Directors, for the proper disposal of the said securities or margins, in accordance with the provisions of the Rules, Regulations and By-Laws of the Association. Said banks shall issue certificates in duplicate, not transferable, for all such deposits. Said certificates shall state by whom the deposit was made, and for whose security the same is held, that the deposit has been made under the Rules of the Board of Trade, and is payable upon the return of the certificate or its duplicate, duly indorsed by the parties to the contract or contracts, or on the order of the President of the Board of Trade, as provided by section 6 of this rule. Said certificate shall be in the following form, to wit:

Certificates for deposits.

How payable.

Form for certificates.

Original (or) Duplicate.

Not Negotiable or Transferable.

CHICAGO,..............................18 .

....has deposited with this Bank ....Dollars, as margin or security on a contract or contracts between the depositor and.................................. which amount is payable on the return of this certificate or its duplicate, duly indorsed by both of the above named parties, or on the order of the President of the Board of Trade of the City of Chicago, indorsed on either the original or duplicate hereof, as provided by the Rules of said Board of Trade, under which the above named deposit has been made.

....

Cashier.

All deposits so made shall be held to have been made as security for the faithful fulfillment of any contracts made or to be made between the parties during the time the deposit shall remain unpaid; *provided*, it shall be competent for either party to a contract to demand that the certificate shall express the particular contract upon which the deposit shall have been made, and in such case the deposit shall be applicable only to the settlement of that contract.

Deposits to be held as security on all contracts between the parties.

Exception.

SEC. 3. The Treasurer of the Association shall, in like manner, and under like safeguards, receive deposits for securities or margins, and issue certificates for the same, payable as is provided by section 2 of this rule.

Margins with the Treasurer.

SEC. 4. The party depositing securities or margins shall, within one hour from the time such deposit shall be called, deposit with the Secretary of the Association, or with the party calling for such deposit, the duplicate certificate for the same, in due form, as provided for in section 2 of this rule.

Notice of deposit of margins.

SEC. 5. Should any party called upon, as herein provided for, fail to deposit the security or margin called, within the next banking hour thereafter, the party making such call shall have the right, if he be the seller, to resell the property for account of the delinquent, such resale to be for the same delivery as was named in the original contract; if he be the buyer he shall have the right to repurchase the property for account of the delinquent, deliverable at the time named in the original purchase, in either case he shall at once communicate to the delinquent the action he has elected to take, and all losses or dam-

Failure to deposit margins.

Contracts may be closed.

ages on such defaulted contract shall be at once due and payable, the same as though said contract had fully matured. The party so calling may, however, elect to permit the contract to stand, in which case no notice to that effect shall be necessary to the delinquent; *provided*, when the call is made during the general meeting of the Association, between 11 A.M. and 1 P.M., the deposit shall be made before 2 o'clock of the same day. All notices for the call of margin, or of the closing of contracts under this rule, may be served on the party called, either in person or by leaving a written notice at his place of business, or may be served in person upon his authorized representative, or upon any clerk representing the party on 'Change; and in case the party called upon shall not be known to have a regular place of business, a written notice left in the office of the Secretary of the Board shall be deemed sufficient.

Notices of call, or of the closing of contracts.

Release of margins on settlement.

SEC. 6. Upon the fulfillment or settlement of any contract, or upon the closing of any contract under the provisions of section 5 of this rule, deposits upon which have been made, and when the full adjustment of all differences relating to the same shall have been effected, the deposits shall thereupon be payable to the party depositing the same; and the joint indorsement of both parties upon the certificate shall be a sufficient authority to the party holding the deposit to pay the same to the holder of the certificate; or in case of a failure between the contracting parties to adjust and settle their respective claims upon the deposit within three (3) business days after the maturity of all contracts upon which the deposit is applicable, the matter in dispute shall, upon the application of either party to such contracts, be submitted to a select committee of three disinterested persons, members of the Association, to be appointed by the President, which committee shall, without unnecessary delay, summon the parties before them, and hear such evidence under oath

Failure to adjust contracts.

Disputes to be submitted to a committee.

as either may wish to submit touching their claims to the deposit, and shall by a majority vote decide, and report to the President of the Board, in writing, in what manner and to whom the deposit is payable, either wholly or in part; whereupon the President shall indorse on either the original or duplicate certificate an order for the payment of such deposit in accordance with the decision of said committee, and such order shall be a sufficient warrant to the party holding the deposit to pay the same in accordance with such order. In case it should occur that by reason of changes in the market, or of delivery upon, or the settlement of a portion of the contracts upon which margins or securities that have been deposited are properly applicable under this rule, that a larger sum remains on deposit than is contemplated by section 1 of this rule upon then existing unadjusted contracts between the parties, and either party to such contract should refuse to release such excess of deposit, the President of the Board is authorized, upon a representation of the facts, and admission or proof that such excess ought to be released, to order such release, and payment to be made to the party to whom it rightfully belongs, by the indorsement of an order to that effect on either the original or duplicate certificate or certificates issued for such deposits: *Provided*, in case of such disagreement no surrender of the deposit shall be ordered until the Board of Directors shall have first estimated and determined the value of the property covered by any contract upon which the deposit has been made, and upon which a default has occurred, on the day of such default, in case either party shall request such decision; nor shall any such surrender be ordered pending any arbitration touching the rights of the parties under the said contract or contracts, or in case the party refusing to adjust the dispute shall signify his willingness to submit the matter to arbitration.

President to release.

Excessive deposits, how released.

Value of property defaulted on, how ascertained.

Value of property for marginal purposes, how determined.

SEC. 7. In determining the value of property under this rule, its value in other markets, or for manufacturing or consumptive purposes in this market, together with such other facts as may justly enter in the determination of its value, shall be considered, irrespective of any fictitious price it may at the time be selling for in this market. Such value, for marginal purposes, in case of disagreement, shall be determined by the Board of Directors, and communicated to the parties in interest through the President or Secretary.

RULE XXV.

REGULAR DELIVERIES.

Tender of warehouse receipts.

SECTION 1. All deliveries upon grain contracts, unless otherwise expressly provided, shall be made by tender of regular warehouse receipts, which receipts shall have been registered by an officer duly appointed for that purpose. All such warehouse receipts shall be made to run five days from date of delivery, on regular or customary storage charges; which regular or customary charges shall follow such warehouse receipts, and be chargeable upon the property covered by the same, and shall be issued by such houses as are in good credit, are conveniently approachable by vessels of ordinary draft, have customary shipping facilities, and are, in other respects, conformable to such requirements as may be prescribed by the Board of Directors.

Requirements for regular warehouse receipts.

Other storage room may be provided in case of necessity.

Provided, that the Board of Directors shall have power, when in their judgment an emergency exists requiring more storage room than can be supplied by the regular elevator warehouses, to declare any store-houses, vessels or places suitable for the storage of grain within the city limits—wherein the cost of delivery to vessels or railroad cars shall not be greater than such as is made by regular elevators for the same service—to be regular places for the storage of grain deliverable under the Rules of the Board of Trade.

Deliveries on time contracts.

After 11 o'clock in the Exchange Hall by written notice.

Notice may pass from one to another.

First delivery, time of.

Notices to be numbered.

Sufficiency of delivery by notice and subsequent actual delivery.

Property to be paid for, and how.

Sec. 2. All deliveries of grain in 5,000 bushel lots, of Mess Pork, Lard or S. P. Hams in 250 package lots, or of Meats in lots of 50,000 pounds, in store on time contracts after 11 o'clock A.M., shall be made in the Exchange Hall between the hours of 1.30 and 2.15 o'clock P.M., and shall be made by a notice in writing, which notice shall state on its face the place of business of its issuer. Such notice shall state in detail the warehouse receipts proposed to be delivered and the contract price on which delivery is proposed to be made, also the net cash value (deducting extra storage) of said property at that price. Such delivery notice may be passed from one purchaser to another before 2.15 o'clock P.M., by the endorsement thereon by the seller of the name of the party to whom it is to be delivered, together with the contract price at which the property is sold, and also the time at which the delivery is made. The first delivery of such notice shall be made before 1.40 o'clock P.M., and any party holding such notice longer than five minutes, as shown by the endorsement on same of the time of the previous delivery, shall not be permitted to deliver it. All delivery notices issued under this rule shall be consecutively numbered by the parties issuing them. Notice of readiness to deliver property as herein provided, and all subsequent transfers of such notices, shall be deemed and held to be a valid and sufficient tender of property on time contracts under the Rules of the Board of Trade, provided the property is actually delivered, or is shown to have been ready for delivery in the manner and upon the terms herein provided. It shall be the duty of the party regularly holding such notice at 2.15 o'clock P.M., to present the same at the office of its issuer before 2.45 o'clock P.M. of same day, together with a certified check on some

Chicago Bank in good standing, or other satisfactory payment, for the net amount due for the property represented by said notice at the price last endorsed upon same, and upon tendering said notice with payment at the office of its issuer the holder of such notice shall be entitled to receive the property represented by same. All differences due from or to parties to such delivery, shall be paid upon the basis of a full delivery and no more, and each purchaser receiving notice of delivery shall be responsible to the seller from whom the notice was received for the difference between the price actually paid for the property and their contract price. In cases where the seller's contract price is less than the price actually paid for the property, such seller shall be responsible to the purchaser to whom he delivered the notice for the difference. All such differences shall be due and payable immediately upon the delivery and payment for the actual property; it being the duty of each person transferring the delivery notice to ascertain what price was actually paid for the property. In case the property represented by such notice is not called and paid for as herein provided, it may be held by the issuer of the notice for and at the expense, for storage, interest, insurance, or other risk, of the party whom it may concern, until 12 o'clock M. of the next business day, at which time it shall be sold in open market for account of whom it may concern; or it may be sold at any time between the hours of 9.30 A.M. and 12 o'clock M. of the next business day. The party holding the property shall, however, at once advise the party to whom he delivered the original delivery notice of the default, and each purchaser receiving said notice of default shall in turn deliver the same without delay to the party to whom he passed the original notice of proposed delivery. All expenses and risk of carrying property defaulted on, including a commission of $\frac{1}{4}$ of one cent per bushel on grain and $\frac{1}{4}$ of one per cent on the market

Differences in prices of delivery, how adjusted.

Differences, when payable.

Default in receipt and payment for property.

Charges.

When sale to be made.

Notice of default to be given.

Charges on default in receiving property, how paid.

value of provisions, shall be payable to the party required to make re-sale by the party to whom he had the property sold, he to be reimbursed by the one to whom he delivered the notice of delivery, and so on until it is finally paid by the party in default, and in case of such default and re-sale of property, all differences shall be adjusted as hereinbefore provided, on the basis of the price at which the property shall have been re-sold. All parties having property due them on time sales shall be present, or shall be represented by an authorized employe, in the Exchange Hall between the hours of 1.30 and 2.15 o'clock P.M. of each business day, and admission to the Exchange Hall shall be denied all parties after 1.30 o'clock P.M. Any property which cannot be delivered, owing to the absence of the buyer from the Exchange Hall, may be sold out by the party having same sold to such absentee, as hereinbefore provided in cases of default, all expenses and risk of carrying the property, commission, etc., shall be paid by the absentee the same as in case of default; *provided, however*, such property shall not be sold until the absentee has had notice in writing, either delivered to him in person, to his business representative, at his place of business, or left at the Secretary's office in case he has no regular place of business, that the property was ready for delivery under this rule on his contract. In case it should appear on complaint, duly made to the Board of Directors, that any member has been guilty of issuing a notice of readiness to deliver property as herein provided, who had not the property mentioned in such notice in his control or possession at the time of issuing such notice, or, having issued such notice, shall thereafter dispose of the property, except as herein provided, or who refuses to deliver up such property when demanded as provided for under this rule, such party shall be deemed guilty of gross fraud, and may be suspended or ex-

Parties entitled to receive property to be represented in the Exchange Hall.

Property not delivered by reason of absence of purchaser, how disposed of.

False notice, how punishable.

pelled from membership in the Association, under the provisions of Rule IV.

Directors may prescribe other warehouse regulations.

SEC. 3. The Board of Directors may prescribe all necessary regulations and requirements for warehousing all kinds of property (other than grain) deliverable by warehouse receipts.

Posting elevators and warehouses.

Posting irregularities.

SEC. 4. It shall be the duty of the Board of Directors, under this rule, to publish annually, or oftener, if necessary, by posting on the bulletin of the Exchange, the names of all elevators and other warehouses, conforming in all respects to prescribed requirements of the said Board; and to report immediately to the Association, by posting as above, any irregularity in the management of such elevators or warehouses, or any fact calculated to discredit or impair the value of warehouse receipts of any such elevators or warehouses, as the same shall come to their knowledge.

Proper tenders.

Of Grain.

Of Mess Pork, Hams or Lard.

Meats.

SEC. 5. All warehouse receipts for property tendered or delivered on contracts, shall be for quantities or parcels, in the aggregate, as sold, accompanied by a memorandum of the property delivered, with the price of the same, together with the amount due therefor: *Provided*, on all time contracts for five thousand (5,000) bushels of grain, or any multiple thereof, deliveries shall be made in lots of five thousand (5,000) bushels; and on all time contracts for mess pork, sweet pickled hams or lard, for two hundred and fifty (250) packages or any multiple thereof, deliveries shall be made in lots of two hundred and fifty (250) packages; and on all time contracts for fifty thousand (50,000) pounds of meats or any multiple thereof, deliveries shall be made in lots of fifty thousand (50,000) pounds; a variation, however, of one per cent in the quantity of grain delivered and that contracted for shall not vitiate a tender or delivery. Any excess or deficit within the above limits shall be settled for at the current market.

RULE XXVI.

RIGHTS OF PARTIES ON CONTRACTS.

Contracts—buyer's demand as to time.

When deliverable.

When no demand shall be made.

SECTION 1. On time contracts, made between members of the Association, where property is bought, deliverable on the buyer's demand within a specified time, the time of delivery shall be as follows: When demand for the property is made by the buyer before 12 o'clock M., the property shall be due and deliverable before 2.15 o'clock P.M. same day. When the demand is made after 12 o'clock M., the property shall be due and deliverableb efore 2.15 o'clock same day, or before 11 o'clock A.M. next day. Or the buyer may specify any particular future day, during the time when the property is deliverable, upon which the property shall be delivered, and the property shall be delivered before eleven o'clock on the day designated: *Provided*, no demand shall be made before the beginning of the time specified when it may be made; and if no demand is made, the property shall be deliverable before 2.15 o'clock P.M. on the day of maturity of contract; and, *provided also*, that all deliveries after 11 o'clock A.M. shall be made by notice under section 2 of Rule XXIV.

Contracts—seller's pleasure as to time.

SEC. 2. On contracts for property deliverable at the pleasure of the seller, within a specified time, the seller may deliver the property on any day during such time, between the hours of 9 and 11 o'clock A.M., or between the hours of 1.30 and 2.15 P.M., as provided by section 2 of Rule XXV.

Sufficiency of a tender.

SEC. 3. On contracts for grain for future delivery, the tender of a higher grade of the same kind of grain than the one contracted for shall be deemed sufficient: *Provided*, the higher grade of grain tendered shall not be of a color or quality that will depreciate the value of the other, if mixed.

Sundays or holidays.

Tenders prohibited.

Sec. 4. When a contract shall mature on Sunday, or on a legal holiday, delivery on such contract shall be made on the preceding business day. No property shall be tendered on any day upon which the Association shall hold no business session.

Delivery of grain sold in store.

Delivery of cash grain.

Tenders during absence of buyer.

Sec. 5. On contracts for grain sold in store, without special agreement as to delivery, the property shall be deliverable before 2.30 o'clock P.M. of the day of sale, or before 11 o'clock A.M. of the next business day. In case a purchase is specified as for cash, it shall, if purchased before 2 P.M., be deliverable before 2.30 o'clock same day; if purchased after 2 P.M., it shall be deliverable before 11 A.M. of the next business day. No property shall be tendered between the hours of 11 A.M. and 1 P.M. except by special agreement. All deliveries, under this section, on Saturday shall be made before 2 o'clock P.M. In case of the tender of property during the temporary absence of the purchaser from his place of business, notice of such tender shall be left at his office, and he shall have the right to call for the same and pay for it within one hour thereafter.

Rights of commission merchants.

May settle trades and substitute new principal.

Guarantee.

Sec. 6. In case any member of the Association, acting as a commission merchant, shall have made purchases or sales, by order and for account of another, whether the party for whom any such purchase or sale was made shall be a member of the Board of Trade or otherwise, and it shall subsequently appear that such trades may be offset and settled by other trades made by said commission merchant, he shall be deemed authorized to make such offset and settlement, and to substitute some other person or persons for the one from or to whom he may have purchased or sold the property originally: *Provided*, that in cases of such substitution the member or firm making the same shall be held to guarantee to his or their principal the ultimate fulfillment of all contracts made for account of such principal which have been so transferred, and shall be held liable to said principal for all damages or loss resulting from such substitution.

Car load of grain to be 24,000 pounds.

SEC. 7. In all sales of grain for future delivery or for transfer to eastern railroads by car loads, a car load shall be deemed to contain twenty-four thousand (24,000) pounds.

RULE XXVI.

FAILURE TO DELIVER OR RECEIVE ON CONTRACTS.

Rights of vendors may be forfeited.

May purchase property on the market.

May require settlement at market.

Settlement must be equitable.

Disagreements to be adjusted by committee.

SECTION 1. In case any property contracted for future delivery is not delivered at maturity of contract, the purchaser may, if he shall so elect, consider the contract forfeited; or he may purchase the property on the market for account of the seller, by 1 o'clock of the next business day, notifying him at once of such purchase; or he may require a settlement with the seller at the average market price on the day of maturity of contract, and any damages or loss due to the purchaser by reason of such purchase or declared settlement, shall be due and payable by the seller immediately: *Provided*, that this section shall not be construed as authorizing extortionate claims based on values manipulated for the purpose of securing such claims; and in case of any disagreement between members of the Association as to the equity of any claim based on action taken by the purchaser under the provisions of this section, either party to such disagreement may call upon the President of the Board for the appointment of a committee to determine such matter of dispute; whereupon the President shall select five discreet and reputable members of the Association (to be approved by the Board of Directors), who are not in any manner interested in the matter in controversy, who shall, without unnecessary delay, organize by electing one of their number chairman, and proceed to hear and determine the question as to the equitable measure of damages,

Committee to be sworn. if any, to be paid by the party in default. Said committee shall, before entering upon their duties, be sworn to fairly and impartially hear and determine the questions presented to them. They shall receive such statements or evidence under oath, as either of the parties may present, and in order that their investigation shall be thorough and impartial, notice of their appointment and of the time and place of the hearing shall be announced on 'Change, and an invitation given to any member of the Association to appear before them with evidence of any facts having a bearing on the subject-matter they are appointed to consider. The committee shall be authorized to determine the relevancy of any testimony presented to them, and if they deem it necessary may call for any available evidence that may not be voluntarily tendered. The said committee, in determining the measure of damages to be paid by the defaulter, shall be authorized to consider whether or not the value of the property in dispute has been enhanced by combination or by any individual for the purpose of extorting unreasonable damages, and shall also consider the effect on values produced by sales in excess of the marketable supply; and in view of all the facts presented and having reference to the duty of the seller to specifically fulfill his contract, shall determine the just and true value of the property defaulted on at the time of the default, and by the value so established shall determine the measure of damages to be assessed; both of which shall be stated in their findings, which shall be made by a majority vote of the committee, and in writing, signed by the chairman of the committee. The decision of said committee as to the value of the property in question on the day to which their decision applies shall be deemed its true value at that date, and shall be accepted and recognized as establishing said value as the equitable basis for all settlements and adjustments of similar defaults by

The hearing to be public.

Testimony.

Attempts at extortion.

Excessive sales.

Findings of committee.

members of the Association on that day, and values so established shall be respected as final by the Board of Directors and Committees of Arbitration and Appeals of the Association. The committee appointed under the provisions of this section shall be entitled to twenty-five (25) dollars for their services, to be equally divided between them; said fees shall be paid in advance by the party upon whose request the committee is called, and shall be finally paid as the committee shall determine and state in their findings.

Decision as to values final.

Fees of committee.

SEC. 2. In case any property contracted for future delivery is not received and paid for when properly tendered, it shall be the duty of the seller, in order to establish any claim on the purchaser, to sell it on the market at any time during the next twenty-four hours, at his discretion, after such default shall have been made, notifying the purchaser within one hour of such sale; and any loss resulting to the seller shall be paid by the party in default.

Rights of vendors.

Failure to receive.

RULE XXVIII.

DISTILLED SPIRITS.

SECTION 1. At the first meeting of the Board of Directors after their election, the President shall, subject to the approval of the Board, appoint as a COMMITTEE ON DISTILLED SPIRITS, three members ot the Association who are engaged in the distilled spirits trade. It shall be the duty of this committee to consider and decide all disputes arising between members dealing in distilled spirits which may be submitted to them. Two of the committee shall constitute a quorum, and a decision of any two of their number shall be final. A fee of nine dollars shall be paid to the committee for every reference case submitted to them, the same to be paid by the

Committee.

Duties.

Quorum.

Fee.

party adjudged to be at fault, unless otherwise ordered by the committee: *Provided*, nothing herein shall prevent settlement of questions of difference by private arbitration.

Inspectors. SEC. 2. All inspecting shall be performed by inspectors regularly appointed by the Board of Directors, and the returns of such inspectors shall be made in exact accordance with the instruments prescribed by the Commissioner of Internal Revenue for all U. S. gaugers.

Returns of inspectors. SEC. 3. Inspectors shall make a detailed return (in duplicate) of each lot inspected, showing the serial number of each barrel, the serial number of each stamp affixed thereto, the gauge, wantage, proof, and number of proof gallons. In case of measurement on account of complaint, he shall make a certificate, in duplicate, showing the serial numbers of the barrels measured, and the result of such measurement. He shall also note on his certificate any imperfection in the quality of the goods or cooperage.

Fee of inspector, how paid. SEC. 4. The buyer shall have the right to designate the inspector, who shall be entitled to receive ten (10) cents per barrel for inspection, to be paid by the seller. The seller may add one-half inspection to the invoice, and the same shall be reimbursed by the buyer.

Complaints of inspection. SEC. 5. All complaints relative to inspection must be made in writing, and addressed to the inspector who inspected the goods, and he shall immediately notify the other party or parties in interest.

When to be made. SEC. 6. Complaints concerning inspection must be made within forty-eight hours after the delivery of the goods.

Error in gauge. SEC. 7. No claim made for error in gauge shall be allowed, unless all the barrels in the lot in question be submitted, and have not received any driving or other cooperage subsequent to the inspection complained of.

Complaints. SEC. 8. In case of a complaint based upon an alleged error in gauge, the inspector who made the original inspection shall immediately measure the lot in question in conformity with the following, viz: The average gauge of a lot of twenty-five (25) barrels or more, shall be estimated by the actual measurement, with a sealed measure, or by actual weight, of not less than one barrel in five of the lot, and the serial numbers of the barrels so measured shall, when the lot sold runs serially, be in direct rotation. In lots of less than twenty-five barrels, either buyer or seller may insist upon the measurement or weight of the whole lot, or of any portion thereof, greater than one barrel in five. If the complaint be ascertained to be not well founded, the inspector shall be entitled to receive twenty five (25) cents per barrel on the lot so measured, to be paid by the complainant. Should the error have arisen from the false shape or construction of the barrel, he shall be entitled to receive twenty-five (25) cents per barrel on the lot, to be paid by the seller. Should the fault have been his own, through the error of his instruments or otherwise, he shall not be entitled to receive any compensation for such measurement: *Provided*, no claim on account of barrel measurement shall be considered adjustable unless made within forty-eight hours after delivery, at the place designated by the buyer at the time of purchase.

Average gauge lot.

Fees for reinspection.

Limitation of claim.

Sec. 9. Upon the receipt of an amended inspector's return, or a certificate showing amendment, the seller shall alter his bill in accordance with said amendment; which bill, so altered, shall be paid by the buyer.

Amended return.

Sec. 10. Highwine barrels must be new (not refilled) and made of well-seasoned timber of the kind usually employed in the manufacture of whisky barrels. They must be sound, in good cartage order, and bound with not less than six (6) iron hoops, and must gauge from forty to forty-six wine gallons; and

New barrels.

Dimensions.

a barrel of highwines, in all settlements, shall be considered as sixty proof gallons.

RULE XXIX.

PROVISIONS.

Inspection committee. SECTION 1. The Board of Directors shall appoint five members of the Association as a Committee on Provision Inspection, who shall have and exercise a general control over the inspection of provisions, and shall act as referees in case of complaint against the Chief Inspector of Provisions or the inspection of any lot of provisions, or any matter of difference pertaining to the same; except as hereinafter provided. **Fees of committee.** The committee shall be entitled to fees amounting to three dollars each for each case of appeal decided by them, to be paid by the party against whom the decision shall be made.

Chief Inspector of Provisions. SEC. 2. The Board of Directors shall also appoint a suitable person as Chief Inspector of Provisions, **Bond.** who shall be required to give a bond in such amount as may be prescribed by the Board of Directors, for the faithful performance of his duties as indicated by the Rules of the Board of Trade or by order of the Board of Directors. Said bond shall be satisfactory to the Board of Directors and be approved by them before the said Chief Inspector shall be entitled to enter upon the discharge of his official duties. Said bond shall be made to the President of the Board of Trade and his successors in office, for the use and benefit of any parties having legal claims for damages against said Chief Inspector on account of any of his official acts.

Deputy Inspectors, how appointed. SEC. 3. The Chief Inspector of Provisions shall appoint, to be confirmed by the Committee on Provision Inspection, a sufficient number of competent deputy inspectors, who shall be under his control and subject to his orders in all matters pertaining to the performance of official duty.

Inspecting. SEC. 4. The Chief Inspector, through and by his deputies, shall furnish the necessary labor and materials for Inspection. **Reports.** The several deputy inspectors shall make a report in detail of every inspection or examination they may make, which report shall be returned to the Chief Inspector, and be by him preserved for future reference.

Registrar of Provisions. SEC. 5. The Board of Directors shall also appoint a competent person as Registrar of Provisions, whose duty it shall be to provide and cause to be kept suitable books in which shall be registered all warehouse receipts for beef and hog product issued as "regular" or for the "regular delivery" of such property in the Chicago market under the Rules of the Board of Trade; such receipts, after being so registered, shall be stamped or written across their face with the word "Registered," and the date of such registry, and signed, in writing, by the said Registrar or some person duly authorized by him for that service. **Requirements for registration.** All warehouse receipts, before being registered, shall be plainly numbered, and shall indicate on their face the number or mark of the particular lot of property intended to be covered or represented by such receipt. All such receipts issued from or by each warehouse or other place of storage shall be consecutively numbered, and no receipts of duplicate numbers issued from the same place of storage shall be registered. **Property to be marked.** All property covered or represented by registered warehouse receipts shall be plainly marked in such manner as will clearly distinguish it from all other property stored in the same warehouse or place of storage, and by such marks, numbers or characters as may be approved by the Registrar of Provisions; such marks to be so arranged as to avoid the possibility of duplication or uncertainty as to the identity of the property so receipted for. No warehouse receipt shall be registered until a report shall have been received at the office of the Registrar of Provisions from a duly authorized deputy that the property represented by the receipt is actually in the place of storage and is marked as indicated in the receipt; such reports shall be in a form prescribed by the Registrar, and shall be preserved by him for future reference. No second warehouse receipt for the same property shall be registered unless the original is presented at the time and its registration canceled by the Registrar. In such case new receipts, either for the whole or parts of lots, or the consolidation of different lots, may be registered upon the report of a deputy that the property is in the place represented, and is marked as represented. All new receipts so registered shall bear the same date, as near as may be, with the originals so canceled, and no receipts differing in date more than thirty days shall be consolidated into a new receipt.

New receipts.

Property not to be removed until registration is canceled.

No property shall be removed from the place of storage indicated by any registered receipt issued to represent it, until the registration of such receipt has first been canceled in the office of the Registrar of Provisions by writing or stamping across its face the words, "Registration Canceled."

Compensation of Chief Inspector.

Compensation of Registrar.

SEC. 6. The Chief Inspector shall receive for his services and for the compensation of the deputy inspectors employed by him, the fees for inspecting as established by the Board of Trade. The Registrar shall receive, as compensation for his own services and the necessary expenses of his office, such sum, to be paid from the funds of the Association, as may be determined by the Board of Directors.

Claims for damages.

How decided.

SEC. 7. All claims for errors of inspection, or damages resulting from improper inspection, shall be made to the Chief Inspector, and in case of dispute as to the validity of any claim so made, the question shall be decided by the Committee on Provision Inspection, or by a special arbitration, if either of the parties so prefer. In the latter case the arbitrators shall be chosen either by mutual agreement, or an equal number, not exceeding two, may be selected each by the Chief Inspector and the claimant; and the persons so chosen shall select an additional arbitrator. Arbitrations either by the Committee on Provision Inspection or special arbitrators, shall be conducted under substantially the same form of proceedings as regular arbitrations under the Rules of the Board of Trade, and shall be subject to all the provisions of regular arbitrations, except that they shall not be subject to appeal.

Regular deliveries.

SEC. 8. All deliveries of beef or hog product in store, in the absence of special agreement, shall be by the delivery of registered warehouse receipts, issued from such warehouses or places only as shall have been declared a regular warehouse for the storage of such property, under the Rules of the Board of Trade, by the Board of Directors; such places of storage, in all cases, to be under cover, and such as is suitable for the proper preservation of the property. All such deliveries shall be accompanied by a certificate of inspection of the Chief Inspector of Provisions, which certificate shall state the number of packages or the number of pieces, together with their weight, in the lot to which it applies, the place where the same is stored, and the distinguishing marks upon it; also the number of packages or pieces examined, and that the same was found to be in good merchantable condition and of standard quality. In the case of barreled pork, the number of pieces and the weight in each barrel shall be stated; also the date of its packing as indicated by the packer's brand upon the packages. Such certificates shall be dated within five (5) days of such delivery; the required number of days shall include both the day of date and the day of delivery.

Character of storage.

Certificate of inspection.

Date of certificate.

Regular warehouses.

SEC. 9. No warehouse receipts for beef or hog product shall be registered except such as have been issued by or from a warehouse or place of storage declared to be a regular warehouse for the storage of such property by the Board of Directors of the Board of Trade; and before any warehouse or storage place shall be declared a regular warehouse for such property, the proprietors thereof shall file a bond with the Board of Trade for such an amount as may be deemed sufficient, and with sureties approved by the Board of Directors; such bond shall be made payable to the President of the Board or his successors in office, for the use of any person or persons suffering damages by reason of the neglect of duty, fault or fraud of the proprietor or manager of such warehouse, and such bond may be prosecuted in the name of the President of the Board of Trade, for the use and benefit of persons aggrieved or damaged by the acts of such warehouse proprietor or manager. All such bonds shall be conditioned upon the faithful and honest performance of his or their duties by the proprietor or manager of his or their warehouses, as defined by the laws of this State, or by the rules of the Board of Trade not inconsistent therewith.

Warehouse bond.

RULE XXX.

SALE OF PROVISIONS.

Provisions to be Standard unless otherwise agreed.

Provisions packed at other points.

SECTION 1. All provisions sold in this market, in the absence of special agreement, shall be deemed Standard, and the property delivered must comply with the requirements of the regulations of inspection established by the Association. And all provisions sent to this market for sale, which, upon examination, shall be found to have been manufactured, handled or packed, in all respects and to all appearances, in conformity with those rules, shall be classed as Standard.

Requirements for Standard.

SEC. 2. All provisions sold as Standard shall be cut, selected and packed, in all respects as to quality and condition, conformably to the classification of inspection as adopted by the Association; and unless otherwise stipulated, on all sales made of any of the grades of provisions as Standard, the seller shall deliver the parcels of the kind and quality called for by such sale, which any duly appointed inspector of the Association has examined, and has certified to have been packed according to the classification, and is at the time of delivery in good merchantable condition in every respect; or, failing to so deliver, he shall be bound to settle his contract under the provisions of RULE XXVII of the Association: *Provided*, that in all sales specified as for cash, the buyer shall not be bound to pay inspection fees unless he orders the inspection of the property.

Settlements.

Inspection of cash property.

Sec. 3. Lard, hams or shoulders may be packed in tierces, either wood or iron bound, or bound partly with both. Provisions from which any gain has been removed shall not afterward be classed as Standard.

How packed.

"Sec. 4. All hog product to be classed as Standard shall comply in all respects with the requirements of the rules of inspection adopted by the Board of Trade, and if delivered on or after January 1, shall include only such as has been packed on or after the first day of the previous November, and, in the case of barreled pork, on and after November 1, 1878, shall include only such as has been packed between November 1 and March 1."

Standard hog product.

Sec. 5. No original weight shall be taken out of any package of provisions which is afterward to be offered for sale by the package, without removing the original packer's brand entirely from the head of the package, unless the property be repacked and *so branded* by the party repacking.

Original weight.

Sec. 6. Buyers of provisions on contracts, deliverable on the demand of the buyer within a specified time, shall have the right to inspect the same before the day of delivery, provided they send an inspector in time to allow the inspection to be completed be-

Buyer's demand—deliveries.

fore the proposed delivery; but failing to do so, the seller shall have the privilege of having the property inspected, the cost to be paid by the buyer.

Deliveries at seller's pleasure.

SEC. 7. On sales of provisions deliverable at the pleasure of the seller within a specified time, the seller shall have the privilege of delivering, at any time during the life of the contract, without previous notice to the purchaser, by the tender of a registered regular warehouse receipt, together with a certificate of inspection, by an inspector of the Association (such inspection having been made within the last five days); such a delivery shall be held to be regular, and the buyer shall receive and pay for the same, together with the fees for inspection. If, however, within the next forty-eight (48) hours the buyer shall produce the certificate of the Committee on Provision Inspection, that the property so delivered is not Standard, the seller shall immediately receive the property back, paying all accrued expenses, and substitute other property that is Standard: *Provided*, that the evidence of the Committee on Provision Inspection, as herein referred to, shall be furnished during the next forty-eight (48) hours, or as soon as said committee can report, they having been called for such examination, and the seller so notified, within the next twenty-four (24) hours. On sales deliverable on the demand of the buyer, if such demand be made, if the buyer calls before the expiration of contract, the seller, if he so elect, shall, in the case of pickled meats, have twenty-four (24) hours to prepare the property for delivery, and on bulk or boxed meats, four (4) working days.

Improper deliveries, how corrected.

Buyer's demand — sales.

Two or more brands — fees.

SEC. 8. On sales of barreled meats, or lard, if more than one brand is tendered, the purchaser shall be required to pay such inspection fees only as would be proper were it all of one brand.

In case property sold does not pass inspection, how adjusted.

SEC. 9. On sales of provisions as Standard, or of a particular packer's brand, in case the property does not pass inspection, the buyer shall elect either to take the lot named at contract price, after being regularly inspected at cost of seller, or to require that some Standard lot be substituted, but the buyer shall receive the one or the other, if tendered within a reasonable time.

Cured meats — deliveries.

SEC. 10. In sales of fully cured meats, or to be fully cured and delivered at any specified time, the seller must deliver in good faith, according to contract; the inspector to be the judge, who shall always be informed of the conditions of the contract before proceeding to inspect. Where sales of dry salted meats are made without other specifications, it shall be considered that the sale contemplates meats fully cured; the inspector to be the judge.

Dry salted meats.

Deliveries inferior to sample.

SEC. 11. In sales of provisions, when an article is substituted or delivered inferior in quality to the sample exhibited, or which had been passed upon by the inspector as Standard, the seller shall be responsible for any damage resulting from such exchange or substitution. All examinations or inspections are to be made within a reasonable time, and proper care of the property is to be taken by the owner or his agent.

Examination and care of property.

Frozen joints.

SEC. 12. Joints cut from hogs that have been frozen shall not be classed as Standard.

Bulk meats — saltage.

SEC. 13. In case of no specific agreement, the saltage allowed on bulk meats shall be one per cent; but should the buyer or seller object, the inspector shall sweep as many drafts as he may consider necessary, and the percentage so determined shall be binding on both parties. But from June 1 to November 1 the tare shall be ascertained by washing in cold water with a cloth, in case of no specific agreement to the contrary. One per cent for drainage shall be allowed on pickled meats.

Drainage.

Tare of lard.

SEC. 14. To determine the tare of lard, the package shall first be weighed gross, the lard then removed, and the empty package subjected to dry heat and drained, the empty package to be then weighed and its weight deducted from the gross weight. The difference so obtained shall be considered the net weight of the lard.

Weight of lard in tierces.

SEC. 15. In case lard in tierces be delivered of a weight more or less than 320 lbs. net per tierce, the shortage or excess shall be settled for at the current market price, but the full number of packages contracted for shall be delivered. In the settlement of contracts for lard, 320 lbs. net shall be taken as the average weight of a tierce.

Settlements.

Deliveries by car or team.

SEC. 16. Provisions, if desired by the purchaser, must be delivered at cars or on teams, from packing-house or store, free of charge. All deliveries of provisions in store shall be free of storage to the buyer for five (5) days, or, if in packing-houses, for three (3) days, except when the first day of the month falls on Sunday or a holiday; in which case receipts shall be regular to the buyer, if free of storage, for four days, or, if in packing-house, two days from the time the seller signifies his readiness to deliver, and any extra expenses attending the examination of provisions are to be paid by the party ordering the same.

Free storage.

Standard net weight of meats in boxes.

SEC. 17. The standard net weight of meats packed in boxes shall be between 450 and 525 pounds for each box, and in all settlements or deliveries of boxed meats an average of 500 pounds net per box shall be made the basis for settlement, and the excess or shortage from said average shall be settled at the market value of the property delivered at the time of its delivery. But in case of delivery the full number of packages contracted for must be delivered.

Weight of sides.

SEC. 18. Long clear sides shall not average less than forty-five (45) pounds; short clear sides shall not average less than forty (40) pounds; and short rib sides shall not average less than thirty (30) pounds, and dry salted shoulders shall not average less than (12) pounds, to be standard and regular on delivery, either loose or boxed.

Shoulders.

SEC. 19. On an examination by an inspector of dry salted meats, in bulk or for boxing, if over twenty (20) per cent turns out rejected, he shall not be required to take the lot in that condition.

Limit on rejected meat to be regular.

SEC. 20. A delivery of sweet pickled hams or shoulders shall be considered regular if they average not over two (2) pieces unsound per tierce, and a deduction of twenty-five (25) per cent on the price shall be made on the unsound.

Unsound hams or shoulders.

RULE XXXI.

TARES.

SECTION 1. In the sale of any property in packages, involving the question of tare, the actual weight of packages (to be ascertained by stripping, at the time of delivery) shall be deducted from the gross weight. In case the purchaser shall require the weighing and stripping of lard that has been delivered on marked weights, such weighing and stripping shall be done, and the result reported, within five (5) business days (including the day of delivery) after delivery, or the purchaser shall have no right of reclamation on the seller.

Packages to be stripped.

Stripping lard.

Time allowed for report.

RULE XXXII.

SECTION 1. All former Rules, By-Laws and Regulations of the Association are hereby repealed: *Provided*, pending complaints and complaints based on transactions or defaults which have occurred prior to the adoption hereof, shall be governed by the rules heretofore in force, except that it shall not be required that such complaints shall be heard or investigated by the Committee of Reference.

Repeal.

Pending complaints and defaults.

BY-LAWS.

ARTICLE I.

Stated meetings—order of proceedings.

At all general or stated meetings of the Association or Board of Directors, the following shall be the order of business:

Call to order.

Reading minutes of previous meeting (which may be dispensed with).

Hearing reports.

General business.

Adjournment.

ARTICLE II.

Business of special meetings.

At all special meetings of the Association or Board of Directors, only such special business shall be considered at was expressly embraced in the call for such meeting.

ARTICLE III.

On debates.

When any member requires it, the mover of a proposition shall put the same in writing. No debate shall be permitted except on a motion regularly made and seconded. A member, however, shall not be prevented from prefacing with explanatory remarks any proposition he may be about to make.

ARTICLE IV.

Limitations upon debate.

Every member who speaks shall rise and address the President, and no person shall speak more than twice on the same subject, except by way of explanation, if objection is made thereto, unless permitted to proceed by a majority of those present.

ARTICLE V.

Question of order.

Appeals.

The presiding officer shall be judge of all questions of order and proceedings, and when the rules of the Association or of parliamentary order are infringed upon, he may call any member to order. A member may appeal to the Association on any question of parliamentary proceeding not provided for by the Rules or By-Laws of the Association, or by a special order, and, if seconded on such appeal, a majority of the members present shall decide the question at issue.

ARTICLE VI.

Interruptions and privileged questions.

No business before any meeting of the Association shall be interrupted, except by motion for the previous question, to lay upon the table, to postpone, or to adjourn, and such motion shall preclude amendment or decision of the original subject until such motion shall be disposed of.

ARTICLE VII.

Division of the question.
What motions not debatable.

Reconsideration, when in order.

A member may call for the division of a question when the sense will admit of it. A motion to lay upon the table, or to indefinitely postpone, shall not be debatable, and a proposition, once acted upon, shall not be revived at the same meeting, except by a vote to reconsider; and a motion to reconsider shall not be entertained, except at the same or the next meeting after the former action, and then only when made by a member absent or voting with the majority.

ARTICLE VIII.

Votes on 'Change.

No vote shall be taken on 'Change, other than one relating to decease of a member, or on a question of adjournment, except when notice has been given at least one day, or by unanimous consent. Upon demand of one-third of the members present, any question, except as herein named, shall be referred to a meeting of the Association at some time other than the usual hours of 'Change.

Reference to a special meeting.

ARTICLE IX.

Application of rules of order.

All questions of order, or proceedings provided for by the Rules and By-Laws, shall be held to govern both the Association and the Board of Directors, so far as they may be applicable.

ARTICLE X.

Rules and By-Laws, how altered or amended.

None of the foregoing RULES or BY-LAWS shall be rescinded or altered, nor shall any new Rules, Regulations or By-Laws, be adopted, unless by an affirmative ballot vote of a majority of the members present (their number being not less than three hundred), at a regular or called meeting of the Association, and after notice of the proposed change shall have been conspicuously posted in the Exchange Room of the Association for at least ten (10) days immediately preceding. No proposition to amend the Rules, Regulations or By-Laws shall be acted upon by the Association unless it has, previously to being posted as above, been approved by a majority of the Board of Directors, at a regular meeting of the said Board, or has been proposed in writing by at least twenty-five (25) members, nor until such proposition shall have been submitted to a regular or special meeting of the Association (not during the regular business hours on 'Change) for discussion, at least one day previous to final action thereon, at which meeting the proposition may be amended or modified in any way that is germane to its original intent: *Provided*, the Board of Directors may fix, alter or repeal any regulations establishing grades or standards of inspection, as contemplated by section 18 of Rule IV; and *provided, further*, that the hours for holding the daily sessions of the Association for trading purposes, as provided by section 6 of Rule IV, and the hours within which trading for future delivery may be conducted, as provided by section 1 of Rule XX, may be modified or changed from time to time by a ballot vote of the members of the Association.

Directors may alter grades.

Trading hours, how changed.

REGULATIONS

OF THE

BOARD OF TRADE

GOVERNING THE INSPECTION OF FLOUR

REGULATION I.

INSPECTION COMMITTEE.

The Board of Directors shall appoint a standing committee on Flour Inspection, to consist of five members, who shall be dealers in flour. This committee shall have and exercise a general control of the inspection of Flour. **Shall consist of five.** **Powers.**

REGULATION II.

FLOUR TO INSPECT AS SOUND.

Flour classed as sound shall be strictly sound, free from any and every defect or fault, causing either smell or taste. **Sound.**

REGULATION III.

FLOUR TO INSPECT AS UNSOUND.

All Flour not strictly sound, whether the unsoundness be derived from the condition of the grain from which it was manufactured, or has originated in the Flour, shall be classed as unsound, or slightly unsound, as its condition may be. **Unsound.**

REGULATION IV.

BRANDING.

Only sound and full weight to be branded.

Brand.

The Inspector shall brand all Flour inspected by him in barrels that is sound and full weight; stencils shall be used for branding, which shall read as follows: "Official Inspection, Board of Trade, Chicago," also giving month and year of inspection.

REGULATION V.

CERTIFICATE OF INSPECTION.

Certificates.

Irregular flour.

Unsound flour—condition to be stated.

Damaged packages.

Flat hoops.

Certificate of inspection shall be issued by the Inspector in strict accordance with the inspection of every lot examined by him. No separate certificate shall be issued by the Inspector for two or more parts of any one lot of Flour inspected by him, a part of which is sound and a part unsound, or when it inspects two or more grades. When Flour is inspected by sample, the certificate shall mention its condition as well as its relation to the sample. When Flour is unsound the Inspector shall state in the certificate the character of the unsoundness as *musty*, *hard sour*, *soft sour*, *unsound* or *slightly unsound*, and the number of packages of each description, and also, when practicable, the number of packages that may be so stained or out of condition as to depreciate the market value of the Flour. In case the Flour has been overhauled and cleaned on account of having been wet, and the Inspector shall deem such overhauling in any way damaging to the market value of the Flour, he shall note in his certificates "wet and cleaned." If Flour is in flat-hooped barrels, the Inspector shall so note in his certificates. Samples of all Flour inspected by the Inspector shall be furnished by him to the party ordering the inspection.

REGULATION VI.

RE-INSPECTION.

Re-inspection, and charges for same.

If a re-inspection of Flour is called for between October 1 and May 1, the fee shall be the same as for the first inspection, to be paid by the party ordering the re-inspection; but between May 1 and October 1 there shall be no charge for a single re-inspection; but on more than one re-inspection of the same Flour the Inspector shall be entitled to his regular fee.

REGULATION VII.

WEIGHTS.

Weight of a barrel of flour.

Short weights.

Fees for stripping.

A barrel of Flour shall be deemed to weigh one hundred and ninety-six (196) pounds net, and no allowance shall be made for any overweight. In case of short weights, the buyer shall be allowed for the shortage at the rate he pays and one-half a cent per pound on the same for freight, and in addition five (5) cents per barrel for the expense of re-filling. Buyers of sacked Flour shall be allowed reclamation for short weights only. The Inspector shall satisfy himself in regard to weights, and in case he deems it necessary to strip some of the Flour, he shall strip five (5) barrels from each lot, and shall be entitled to fifteen (15) cents for each barrel so stripped if it proves to be short in weight; the charge for stripping to be paid by the seller.

REGULATION VIII.

INSPECTOR'S FEES.

Fees for inspection.

The fee for inspecting and branding Flour within the city of Chicago shall be at the rate of two (2) cents per barrel, whether the Flour be in barrels or sacks.

REGULATION IX.

REPORTS OF STOCKS AND INSPECTIONS.

Stocks to be reported monthly.

It shall be the further duty of the Inspector to ascertain the stock of Flour in Chicago on the first day of each month, and to report the same to the Secretary of the Association, to be by him posted upon the bulletin of the Exchange room. In taking the account of stock there shall be included only the amount in the several freight depots, the public warehouses, and the place of storage by receivers, and in the city mills. The Inspector shall also furnish to the Secretary of the Association, monthly, a statement of the number of barrels and the number of sacks of Flour inspected by him during the preceding month.

Inspections to be reported.

REGULATION X.

SAMPLES TO BE RETAINED.

Samples to be retained.

The Inspector shall retain samples of all Flour inspected by him for a term of sixty days from time of inspection, and on the request of either buyer or seller shall preserve the samples for a period not to exceed four months.

REGULATION XI.

APPEALS.

Appeals.

In case either the buyer or seller is dissatisfied with the inspection of Flour, he shall have the privilege of taking an appeal to the Committee on Flour Inspection, upon paying a fee of five dollars for every appealed case; this fee to be paid to the Secretary of the Board by the party making the appeal at the time the appeal is made. Such fees to be paid by the Secretary to the committee in case the Inspector is sustained, but in case the Inspector is not sustained, the fee shall be refunded to the applicant for the appeal. The samples, without name or date, shall be furnished by the Inspector, who shall state the cause of appeal. Neither buyer nor seller shall be represented before the committee, and the decision of a majority of the committee shall be final.

How conducted.

REGULATION XII.

CARTAGE OF FLOUR.

Cartage in absence of special agreement.

In the absence of special agreement to the contrary, it is established as a regulation of trade that in sales of Flour any cartage for moving the property from where it is at the time of sale shall be paid by the buyer.

REGULATION XIII.

REPEAL OF FORMER REGULATIONS.

Repeal.

These regulations shall take effect and be in force immediately, and all former regulations governing the inspection of Flour are hereby annulled.

RECOMMENDATIONS.

Flour in sacks, how fastened and loaded.

The Committee on Flour Inspection recommend to millers and shippers of Flour in sacks, to be inspected in this market, that in closing the sack the mouth edge of the sack be turned in without rolling and sewed with a single seam, the stitches to be at least one and a half inches apart. Also, that in loading cars the sacks be placed on end with the mouth up. Unless these recommendations be complied with, the Inspector will charge for the labor necessary to put the Flour in proper position for inspection.

RULES GOVERNING THE INSPECTION OF GRAIN

(STATE INSPECTION)

IN THE CITY OF CHICAGO.

The following are the rules adopted by the Board of Railroad and Warehouse Commissioners, establishing a standard of grades for the inspection of grain, under the authority of the State of Illinois, in force January 1882.

WINTER WHEAT.

White Winter.

No. 1 WHITE WINTER WHEAT shall be pure White Winter Wheat, sound, plump and well cleaned.

No. 2 WHITE WINTER WHEAT shall be White Winter Wheat, sound and reasonably pure and reasonably clean.

Amber Winter.

No. 1 AMBER WHEAT shall be pure Amber Winter Wheat, sound, plump and well cleaned.

Long Red Winter.

No. 1 LONG RED WINTER WHEAT shall be pure Red Winter Wheat, of the long berried varieties; sound, plump and well cleaned.

No. 2 LONG RED WINTER WHEAT shall be of the same varieties as No. 1, sound and reasonably clean.

Red Winter.

No. 1 RED WINTER WHEAT shall be pure Red Winter Wheat, of both light and dark colors of the shorter berried varieties; sound, plump and well cleaned.

No. 2 RED WINTER WHEAT shall be Red Winter Wheat, of both light and dark colors; sound and reasonably clean.

No. 2 Winter.

No. 2 WINTER WHEAT shall include all mixtures of the different varieties of Winter Wheat, and shall be sound, reasonably clean, and of good milling quality.

No. 3 Winter.

No. 3 Winter Wheat shall include Winter Wheat not clean and plump enough for No. 2, but weighing not less than 54 pounds to the measured bushel.

Rejected Winter.

Rejected Winter Wheat shall include Winter Wheat damp, musty, or from any cause so badly damaged as to render it unfit for No. 3.

SPRING WHEAT.

Hard Spring.

No. 1 Hard Spring Wheat shall be sound, plump and well cleaned.

No. 2 Hard Spring Wheat shall be sound, reasonably clean, and of good milling quality.

Spring Wheat.

No. 1 Spring Wheat shall be sound, plump and well cleaned.

No. 2 Spring Wheat shall be sound, reasonably clean, and of good milling quality.

No. 3 Spring Wheat shall include all inferior, shrunken or dirty Spring Wheat, weighing not less than 53 pounds to the measured bushel.

Rejected Spring Wheat shall include Spring Wheat damp, musty, grown, badly bleached, or for any other cause which renders it unfit for No. 3.

Mixed Wheat.

In case of the mixture of Spring Wheat and Winter Wheat, if equal or superior to No. 2, it shall be graded as Mixed Wheat, according to the quality thereof, and if inferior to No. 2 it shall be graded as Spring Wheat according to the quality thereof.

Black Sea and Pfife Wheat.

Black Sea and Flinty Pfife Wheat shall in no case be inspected higher than No. 2, and Rice Wheat no higher than rejected.

CORN.

Yellow.

No. 1 Yellow Corn shall be yellow, sound, dry, plump and well cleaned.

White.

No. 1 White Corn shall be white, sound, dry, plump and well cleaned.

Mixed. No. 1 Corn shall be sound, dry, plump and well cleaned, white and yellow unmixed with red.

High Mixed. High Mixed Corn shall be three-quarters yellow and equal to No. 2 in condition and quality.

No. 2. No. 2 Corn shall be dry, reasonably clean, but not plump enough for No. 1.

Kiln dried. No. 2 Kiln Dried Corn shall be sound, plump and well cleaned, White or Yellow. All kiln-dried corn not good enough for No. 2 kiln-dried shall be graded as Rejected kiln-dried Corn.

New. New High Mixed Corn shall be three-fourths yellow, of any age, reasonably dry, and reasonably clean, but not sufficiently dry for High Mixed or No. 2.

New Mixed Corn may be less than three-fourths yellow, of any age, and shall be reasonably dry and reasonably clean, but not sufficiently dry for No. 2.

Rejected. Rejected—All damp, dirty or otherwise badly damaged Corn shall be graded as Rejected.

OATS.

White. No. 1 Oats shall be white, sound, clean, and reasonably free from other grain.

No. 2 White Oats shall be three-quarters white and equal to No. 2 in all other respects.

Mixed. No. 2 Oats shall be sound, reasonably clean, and reasonably free from other grain.

Rejected. Rejected—All Oats, damp, unsound, dirty, or for any other cause unfit for No. 2, shall be graded as Rejected.

RYE.

Nos. 1 and 2. No. 1 Rye shall be sound, plump and well cleaned.

No. 2 Rye shall be sound, reasonably clean, and reasonably free from other grain.

Rejected. Rejected—All Rye, damp, musty, dirty, or from any cause unfit for No. 2, shall be graded as Rejected.

BARLEY.

No. 1 Barley shall be plump, bright, clean, and free from other grain. **No. 1.**

No. 2 Barley shall be sound, of healthy color (bright or but slightly stained), not plump enough for No. 1, reasonably clean, and reasonably free from other grain. **No. 2.**

No. 3 Barley shall include slightly shrunken and otherwise slightly damaged Barley, not good enough for No. 2. **No. 3.**

No. 4 Barley shall include all Barley, fit for malting purposes, not good enough for No. 3. **No. 4.**

No. 5 Barley shall include all Barley which is badly damaged, or for any cause unfit for malting purposes, except, that Barley which has been chemically treated shall not be graded at all. **No. 5.**

New grain. The word "new" shall be inserted in each certificate of inspection of a newly harvested crop of oats until the 15th day of August; of Rye until the 1st day of September; of Wheat until the 1st day of November; and of Barley until the 1st day of May of each year. This change shall be construed as establishing a new grade for the time specified, to conform in every particular to the existing grades of grain, excepting the distinctions of "new" and "old."

Grain out of condition. All grain that is warm or that is in a heating condition, or is otherwise unfit for warehousing, shall not be graded.

Reasons for inspection. All inspectors shall make their reasons for grading grain, when necessary, fully known by notations on their books. The weight alone shall not determine the grade.

Wheat to be weighed. Each inspector is required to ascertain the weight per measured bushel of each lot of wheat inspected by him, and note the same in his book.

Unauthorized inspectors.

Any person who shall assume to act as an Inspector of Grain, who has not first been so appointed and sworn, shall be held to be an impostor, and shall be punished by a fine of not less than $50 nor more than $100 for each and every attempt to so inspect grain, to be recovered before a justice of the peace.

Neglect of duty or corruption.

Tampering with inspectors.

Any duly authorized Inspector of Grain, who shall be guilty of neglect of duty, or who shall knowingly or carelessly inspect or grade any grain improperly, or who shall accept any money or other consideration, directly or indirectly, for any neglect of duty or the improper performance of any duty as Inspector of Grain, and any person who shall improperly influence any Inspector of Grain in the performance of his duties as such inspector, shall be deemed guilty of a misdemeanor, and, on conviction, shall be fined in a sum of not less than $100 nor more than $1,000, in the discretion of the court, or shall be imprisoned in the county jail not less than three nor more than twelve months, or both, in the discretion of the court.

Badge.

All assistant inspectors, when upon duty, shall wear a badge furnished by the Chief Inspector, plainly designating the position of each in the department.

Mixed lots of grain.

The said Chief Inspector, and all persons inspecting grain under his direction, shall in no case make the grade of grain above that of the poorest quality found in any lot of grain when it has evidently been mixed or doctored for the purpose of deception.

Attempts to defraud the inspection system.

All persons employed in the inspection of grain shall report all attempts to defraud the system of grain inspection as established by law. They shall also report to the Chief Inspector, in writing, all instances where warehousemen deliver or attempt to deliver grain of a lower grade than that called for by the warehouse receipt. They shall also report all attempts of receivers or shippers of grain to instruct or in any way influence the action or opinion of the inspector, and the Chief Inspector shall report all such cases to the commissioners.

REGULATIONS

FOR THE

INSPECTION OF PROVISIONS.

IN FORCE JANUARY 1, 1882.

Duty of inspectors.

REGULATION 1. For the examination of provisions sold as standard, it shall be the duty of any inspector properly appointed by the Association, on receiving notice, to go to any packing house or warehouse in the city, to examine provisions, in such quantities as may be required, selecting the same in such a manner, from the lots specified, as, in his judgment, will give a fair sample of the whole.

Certificates.

REG. 2. If, upon examination, the property is found, in all respects, up to the requirements of the classification of the grades adopted by the Association, he shall issue a certificate to that effect, which certificate shall state the number of packages, pieces or pounds examined, and also the number of packages, pieces or pounds in the lot to which the examination is intended to apply, and that the packages (if any) are in good merchantable order and condition. In the case of Lard, no certificate for inspection shall be issued unless every package is examined; but, on request of the owner or person ordering the inspection, the inspector may examine a part of a lot, and issue a certificate of such examination, stating the number of packages examined, and also the whole number of packages in the lot.

On lard.

Removal of provisions.

REG. 3. When necessary to remove property for the convenience of examination, it shall be the duty of the inspector to send for the same, that a fair sample may be obtained. In no case should a certificate be granted on samples delivered by the seller.

Fees for inspecting by sample.
Beef and Pork.
S. P. meats.
Boxed meats.
Full inspection.
Beef and Pork.
S. P. meats.
Dry salted meats.
Lard.
Tallow and Grease.
Weighing.
Stripping.
Breaking down and repiling.

Reg. 4. The fees for inspection are established as follows: For inspection by sampling — including repacking and coopering,—Beef and Pork, for the first five barrels, eighty (80) cents per barrel, and for each additional barrel, twenty-five (25) cents. For inspecting S. P. meats, for the first five tierces, one (1) dollar per tierce, and for each additional tierce, twenty-five (25) cents. For inspecting boxed meats, for the first five boxes, one (1) dollar per box, and for each additional box, fifty (50) cents. When the whole of a lot is inspected—labor and coopering to be furnished by the seller — for Beef and Pork, ten (10) cents per barrel. For S. P. meats, in lots of fifty (50) tierces or more, twelve and a half (12½) cents per tierce; in lots of one hundred (100) tierces or more, ten (10) cents per tierce. For bulk or boxed meats, in carload lots or more, fifteen (15) cents per one thousand (1,000) pounds. For Lard, in lots of one hundred (100) tierces or more, four (4) cents per tierce. For Tallow and Grease, five (5) cents per tierce. The fees for weighing, not including breaking down and repiling, are established as follows: Lard and Grease, in lots of one hundred (100) packages or more, four (4) cents per package. Tallow, in half hogsheads, or smaller packages, five (5) cents per package; in hogsheads, ten (10) cents each. Bulk meats, not including labor, ten (10) cents per one thousand (1,000) pounds. For stripping Lard or Grease, at regular warehouses, not less than five (5) packages, fifty (50) cents per package. For the labor of breaking down and repiling, the inspector shall be paid three (3) cents per package, the same to be paid to the warehouseman if repiled, or to the party shipping the property if shipped without repiling.

Repacked provisions.

Reg. 5. It shall be the duty of the inspector, when requested by the owner, either at any packing-house, warehouse, or in yards provided by the inspector, to overhaul and inspect provisions, according to the qualifications and classifications authorized; two hundred pounds of meat, with abundance of good salt, to be repacked into each barrel, and cooperage to be put in good order; each barrel of provisions that is sound, sweet, and free from any and every defect, to have grade and date of inspection branded thereon, and the word "Repacked," as hereinafter specified; and any portion that is defective to be branded, in like manner, Rusty, Sour or Tainted, as the case may be; the said brand to be placed with the inspector's brand across the regular packer's brand; such provisions, according to the grade or quality, to be classed as "Repacked 200 lbs."

Branding.

Branding implements.

Reg. 6. The inspectors shall use metallic letters and figures, marking-iron or stencil for their dates and class of inspection.

Branding.

Reg. 7. It shall also be the duty of the inspector to put his metallic brand, marking-iron or stencil on all samples of provisions in tierces or barrels that he inspects; and he shall pass no hog products in tierces or barrels as Standard, unless the real packer's name, location, number of pieces, date, and weight of the products contained therein are branded, according to these rules, on the head of every package.

Pickled meats irregularly packed.

Reg. 8. Should the inspector be called upon to inspect pickled meats, and upon examination he should be of the opinion that the number of pounds required by these rules had not been originally packed, he shall not pass them as Standard, but shall refer the matter at once to the Committee on Provision Inspection, who shall investigate, and if a satisfactory explanation can be given or arrived at, they shall instruct the inspector to proceed and inspect and pass them; but if not satisfactory to the committee they shall, in their judgment, make the fact known to the Association in any way they may think most proper.

Uniformity of contents.

Reg. 9. Contents of each package of pickled meats must show a reasonable uniformity in weight, according to its class.

Visitation of packing houses.

Reg. 10. It shall be the further duty of the inspectors, during the packing season, to visit frequently the different packing-houses to see that provisions are properly dated and branded at time of being packed.

Cut of sides may be changed.

Reg. 11. Dry salted rough sides may be made into short rib or short clear sides, and dry salted short rib sides may be made into short clear sides, if, in all other respects, they are up to the requirements, and shall be classed as Standard.

Technicalities.

Reg. 12. All the foregoing regulations, and the requirements as to the cut and packing of hog products, must be justly and liberally construed, and no property shall be rejected or condemned on mere technicalities; but this shall not be regarded as giving license to departure from their general spirit and intent.

REQUIREMENTS AS TO CUT AND PACKING OF HOG PRODUCTS.

BARRELED PORK.

MESS PORK.

Standard.

Standard Mess Pork should be made from sides of well-fatted Hogs, split through or on one side of the backbone, and equal proportions on both sides, cut into strips of reasonably uniform width, properly flanked and not backstrapped.

Weight of green meat to be packed.

Proportion.

Brine.

One hundred and ninety (190) pounds of Green Meat, and between March 1 and November 1 two hundred (200) pounds, numbering not over sixteen (16) pieces, including the regular proportion of Flank and Shoulder cuts, placed four layers on edge, without excessive crowding or bruising, shall be packed in each barrel, with not less than thirty (30) pounds of coarse salt, and barrel filled with brine of full strength, or thirty (30) pounds of coarse salt, and in addition thereto, fifteen (15) pounds of salt, and barrel filled with cold water.

PRIME MESS PORK.

Size of hogs—Style of cut.

Prime Mess Pork should be made from the Shoulders and Sides of Hogs weighing from one hundred (100) to one hundred and seventy-five (175) pounds, net, to be cut as near as practicable into square pieces of four (4) pounds each; the shank of the Shoulder to be cut off close to the breast.

Weight.

Proportion of pieces.

One hundred and ninety (190) pounds of Green Meat in the proportion of twenty (20) pieces of Shoulder cuts to thirty (30) pieces of Side cuts shall be properly packed in each barrel, with not less than twenty (20) pounds of coarse salt, and barrel filled with brine of full strength; or, twenty (20) pounds of coarse salt, and in addition thereto, fifteen (15) pounds of salt, and barrel filled with water. There shall also be put into each barrel twelve (12) ounces of saltpeter.

Brine.

EXTRA PRIME PORK.

Make and cut. Extra Prime Pork should be made from heavy untrimmed shoulders, cut into three (3) pieces; the leg to be cut off close to the breast, and in all other respects to be cut, selected and packed as Mess Pork.

LIGHT MESS PORK.

Requirements. Light Mess Pork should be made from Sides of reasonably well-fatted Hogs; and in all other respects to be cut, selected and packed same as Mess Pork, except that as many as twenty-two (22) pieces may be put into each barrel.

BACK PORK.

Requirements Back Pork should be made from backs of Hogs after bellies have been taken off, cut into pieces of about six (6) pounds each, and in all other respects to be cut, selected and packed in the same manner as Mess Pork.

EXTRA SHOULDER PORK.

Requirements. Extra Shoulder Pork should be made from heavy trimmed Shoulders, cut into three (3) pieces; the leg to be cut off close to the breast, and in all other respects to be cut, selected and packed in the same manner as Mess Pork.

EXTRA CLEAR PORK.

Requirements. Extra Clear Pork should be made from the Sides of extra heavy, well-fatted Hogs, the backbone and ribs to be taken out, the number of pieces in each barrel not to exceed fourteen (14), and in all other respects to be cut, selected and packed in the same manner as Mess Pork.

CLEAR PORK.

Clear Pork should be made from the Sides of extra heavy, well-fatted Hogs, the backbone and half the rib next the backbone to be taken out, the number of pieces in each barrel not to exceed fourteen (14), and in all other respects to be cut, selected and packed in the same manner as Mess Pork. **Requirements.**

CLEAR BACK PORK.

Clear Back Pork should be made from the backs of heavy, well-fatted Hogs, after bellies have been taken off and backbone and ribs taken out, cut into pieces of about six (6) pounds each, and in all other respects to be packed in the same manner as Mess Pork. **Requirements.**

RUMPS.

Rumps should be trimmed with only enough taken off to make them neat and smooth; the tails to be cut off close, and in all other respects to be cut, selected and packed in the same manner as Mess Pork. **Requirements.**

PICKLED MEATS.

STANDARD SWEET PICKLED HAMS.

Standard Sweet Pickled Hams should be cut short and well rounded at the butt, properly faced, shank cut in or above the hock joint; to be reasonably uniform in size, and to average, in lots, not to exceed sixteen (16) pounds. **How cut.** Three hundred (300) pounds, block weight, shall be packed in each tierce, with either twenty-four (24) pounds of salt, three (3) quarts of good syrup, twelve (12) ounces of saltpeter, and tierces filled with water; or tierce filled with sweet pickle, made according to above standard. **Weight.**

STANDARD SWEET PICKLED SHOULDERS.

How cut. Standard Sweet Pickled Shoulders should be well cut and trimmed, reasonably uniform in size, and to average, in lots, not to exceed sixteen (16) pounds. **Weight.** Three hundred (300) pounds, block weight, shall be packed in each tierce. **Pickle.** Pickle the same as used for Hams.

NEW YORK SHOULDERS.

Requirements. New York Shoulders should be made from small, smooth Hogs, shank cut off one inch above knee joint, trimmed close and smooth, reasonably uniform in size, and to average, in lots, not to exceed fourteen (14) pounds. **Weight and pickle.** Three hundred (300) pounds, block weight, shall be packed in each tierce. Pickle the same as used for Hams.

SWEET PICKLED BELLIES.

Requirements. Sweet Pickled Bellies should be made from nice smooth Hogs, well cut and trimmed, to average, in lots, not to exceed fourteen (14) pounds. **Weight and pickle.** Three hundred (300) pounds, block weight, shall be packed in each tierce. Pickle the same as used for Hams.

BRANDING.

Requirements. The packer's name, location, number of pieces, and date of packing, shall be branded on the head of each package of Pickled Meats at the time of packing.

UNIFORMITY OF PICKLED MEATS.

To be uniform. All Pickled Meats should be sized when packed, the light, medium and heavy separately, as nearly as practicable.

CUT MEATS.

HAMS.

How cut. Hams should be cut short, well rounded at the butt, properly faced, cut in or above the hock joint.

SHOULDERS.

Shoulders should be cut as close as possible to the back part of the forearm joint, butted off square on top; neckbone and short ribs taken out, blood vein lifted and cut out, breast flap to be trimmed off, and foot to be cut off in or above the knee joint. How cut.

BLADED SHOULDERS.

Bladed Shoulders should be cut the same as Standard Shoulders, excepting the shoulder-blade to be taken out and the corners rounded. Shoulder-blade out.

ROUGH SIDES.

Rough sides should be made by splitting the Hog through or on one side of the backbone, and an equal proportion of both sides must be delivered on sales to make them Standard. How made.

SHORT CLEAR SIDES.

To make Short Clear Sides, the backbone and ribs should be taken out, henchbone or breastbone sawed or cut down smooth, and even with the face of the Side; feather of bladebone not to be taken out, and Sides not to be backstrapped or flanked. How made.

SHORT RIB SIDES.

To make Short Rib Sides, the backbone should be taken out, henchbone and breastbone sawed or cut down smooth and even with the face of the Side; feather of bladebone not to be taken out, and Sides not to be backstrapped or flanked. How made.

LONG CLEAR SIDES.

To make Long Clear Sides, the backbone, shoulder bones and ribs must be taken out, leg cut off close to the brisket, henchbone and breastbone sawed or cut down smooth and even with the face of the Side, and Sides not to backstrapped or flanked. How made.

CUMBERLAND SIDES.

How made. To make Cumberland Sides, the Side and Shoulder should be left together in one piece, leg cut off below the knee joint; shoulder ribs, neckbone and backbone taken out; blood vein lifted and cut out; henchbone and breastbone sawed or cut down smooth and even with the face of the Side, and Sides not to be backstrapped or flanked.

LONG RIB SIDES.

How made. Long Rib Sides should be made same as Cumberlands, except that the shoulder bones must be taken out, and leg cut off close to the brisket.

STRETFORD SIDES.

How made. Stretford Sides should be made from Hogs weighing about 140 to 160 pounds net; backbone and half of the ribs taken out, bladebone taken out, knuckle left in, and leg cut off close to the breast.

BIRMINGHAM SIDES.

How made. Birmingham Sides should be made from Hogs weighing about 170 pounds net; backbone, ribs and bladebone taken out, pocket piece cut out and pocket nicely rounded, knucklebone left in, and leg cut off close to the breast.

SOUTH STAFFORDSHIRE SIDES.

How made. South Staffordshire Sides should be made the same as Birmingham, except loin taken out full to top of shoulder-blade, leaving only a thin strip of lean along the back; knuckle left in, and leg cut off close to the breast.

YORKSHIRE SIDES.

How made. Yorkshire Sides should be made the same as Cumberlands, with ribs out and leg cut off about two inches above the knee.

IRISH CUT SIDES.

Irish Cut Sides should be made the same as Long Clear, except top of the pocket cut off, knucklebone left in. How made.

LONG HAMS.

Long Hams should be cut from the Side by separating with a knife the hipbone from the rump, properly rounded out, foot unjointed at first joint below the hock joint. How made.

SOUTH STAFFORDSHIRE HAMS.

South Staffordshire Hams should be cut short, hipbone taken out at socket joint, hock unjointed at first joint below the hock joint. How made.

UNIFORMITY OF BOXED MEATS.

In packing Meats in boxes, the pieces should be classified—the light, medium and heavy separately, as nearly as practicable, in packages made to suit the different sizes. Direction for packing.

LARD.

CHOICE LARD.

Choice Lard to be made from leaf and trimmings only, either steam or kettle rendered, the manner of rendering to be branded on each tierce. Requirements.

PRIME STEAM LARD.

Prime Steam Lard shall be Standard when made from the head, gut, leaf and trimmings, in the proportion in which the same came from the hog. Requirements.

PACKAGES.

COOPERAGE.

Cooperage shall be made of well-seasoned White or Burr Oak, free from objectionable sap. Materials.

BARRELS.

Dimensions. For barrels, staves should be five-eighths ($\frac{5}{8}$) of an inch thick, twenty-nine (29) or thirty (30) inches long; heads eighteen (18) inches, one (1) inch thick in center, and three-eighths ($\frac{3}{8}$) at bevel; **Hoops.** hoops hickory, or white oak, to be hooped not less than eleven-sixteenths ($\frac{11}{16}$).

TIERCES.

Dimensions. Tierces for Hams, Shoulders, Beef or Lard, should be thirty-two (32) inches long with a twenty-one (21) inch head, or thirty-three (33) inches long with a twenty and one-half ($20\frac{1}{2}$) inch head; staves to be chamfered at the head. Quality of staves and hoops to be the same as for barrels; staves three-fourths ($\frac{3}{4}$) of an inch thick; heads same thickness as for barrels; **Hoops.** hooped eleven-sixteenths ($\frac{11}{16}$). Iron-bound tierces for Lard, Hams or Shoulders, shall be classed as Standard if made in compliance with the requirements of this rule, as to heading and staves, and hooped with not less than four good hoops on each end.

BOXES.

How made and secured. Boxes should be made of sound common boards, reasonably dry, one inch thick, dressed on one side, not over three strips to each end, side, bottom or top; to have good, strong hardwood, whitewood or sap pine stays inside each corner; should be well nailed and strapped with birch, oak or hickory straps around each end, to lap three inches on the cover. Boxes should be nailed together with tenpenny nails, and the stays nailed in with eightpenny nails.

FLAX SEED.

REGULATIONS ADOPTED BY THE BOARD OF TRADE FOR THE INSPECTION AND WEIGHING OF FLAX SEED.

Manner of inspecting. In inspecting Flax Seed in bags or sacks, the Inspector shall take from each bag or sack an average sample of not less than one gill; said sample to be taken by a tin cup if bags are emptied. **Seed in cars.** In inspecting cars in bulk, samples shall be drawn from different parts of the car until a fair average sample of the whole car load, of not less than one half bushel, shall be obtained; **From store.** and when from elevators or warehouses, he shall take an average sample of not less than one quart from each and every draft weighed. From the samples so obtained, thoroughly mixed, he shall make the inspection, testing one pound of such mixture; **Samples to be preserved.** and after obtaining the percentage of dirt and impurities, he shall again mix the dirt and pure seed together, and preserve the one pound so tested for sixty days, designating on each sample the car number or boat such seed was received from or delivered to. The remainder of the samples drawn, after the pound is taken from them, shall be returned to and weighed with the original lot. **Official tester.** In the inspection of Flax Seed, a Flax Seed testing scale and sieves with meshes 3×16 and 16×16 shall be used.

Certificate. It shall be the duty of the inspector, after having inspected Flax Seed, to furnish the seller or owner of the same a certificate of inspection, and also keep a record of the same in his office. The certificate shall state the percentage of dirt and impurities in the seed so inspected, and shall also state whether the seed to which the certificate applies is merchantable and in good condition, otherwise than from dirt and impurities. **Merchantable seed.** Merchantable Flax Seed shall include only such as is dry, sweet, and of a reasonably sound berry. **Rejected.** All Flax Seed shrunken, damp, musty, mouldy, or otherwise unfit for merchantable seed, shall be graded Rejected, and so designated in the certificate of inspection, which shall also state the reasons for it being so graded.

Fees for inspection, how paid. The charges for inspection, to be regulated by the Board of Directors, shall be paid by the seed (seller or owner) on seed inspected from cars or into warehouses, and by the seller when inspected from warehouses.

Board of Trade not liable for acts of Inspector. The Board of Trade, in establishing these regulations for the inspection of Flax Seed, and appointing an inspector thereof, assumes no liability or responsibility for errors in judgment or otherwise on the **Inspection not compulsory.** part of the inspector, nor does it assume to interfere with the rights of parties buying and selling Flax Seed to do so by sample, or in any other manner **Basis of trading.** upon which they may agree; but, in the absence of a special agreement to the contrary, it is established as a regulation of the trade that Flax Seed shall be bought and sold on the basis of pure seed, and all **Allowances.** seed testing over seven (7) per cent of impurities shall be subject to the following deductions from the purchase price, to wit: On Seed testing over seven (7) per cent of impurities, a deduction of one-quarter of one cent per bushel for each one (1) per cent of impurities, or fraction thereof over seven (7) per cent, up to a test of fifteen (15) per cent of impurities, and an additional deduction of one-half of one cent per bushel for each one (1) per cent of impurities or fraction thereof over fifteen (15) per cent.

Fees for inspecting. The fees for inspecting Flax Seed are established as follows: For inspecting Flax Seed into store, fifty (50) cents per car load or fractions of a car load. For inspecting Flax Seed from store to vessels in bulk, thirty (30) cents per 1,000 bushels; to cars, in bulk or bags, fifty (50) cents per car load in cases where the shipment is of less than ten (10) cars; for ten (10) or more cars in one shipment, the fees shall be fifty (50) cents per 1,000 bushels, whether in bulk or bags. In cases where the seed is billed through and inspected in transit, if in bulk the fee for inspecting shall be fifty (50) cents per car load; if in bags, and the inspector is allowed to sample each bag with a seed-tryer, the fee shall be one (1) dollar per car; in case he is desired to, and does, open each bag and sample the seed with a large tryer, the fee shall be two (2) cents per bag, the certificate of inspection in such cases to state the manner in which the sampling was done.

Through consignments.

For weighing Flax Seed, delivered at buyer's warehouse, in bags or in bulk, the buyer furnishing the necessary handling labor, the charges shall be thirty (30) cents per car load or fraction of a car load, to be paid by the buyer, who shall be authorized to deduct one-half of such charge from the seller's invoice.

fees for weighing.

REGULATIONS FOR THE INSPECTION OF HAY.

Requirements. No. 1 Timothy shall be Timothy, and not more than one-fifth of other tame grasses, mixed; good color, well cured, and free from must.

Requirements. No. 2 Timothy shall be Timothy, and not more than one-third of other tame grasses, mixed; good color, well cured, and free from must.

Requirements. Mixed Hay shall consist of tame grasses, mixed; good color, well cured, and free from must.

Requirements. Prime Prairie shall be purely upland hay, free from swail grasses; good color, well cured, and free from must.

Requirements. No. 1 Prairie shall be upland and midland Prairie Hay; good color, well cured, and free from must.

Requirements. No. 2 Prairie shall be swail or slough Hay, either wholly or mixed with upland; good color, well cured, and free from must.

Hay out of condition. No Grade Hay; all kinds of Hay, badly cured, stained, or in any way out of condition; the certificate of inspection stating whether it is tame or Prairie Hay.

To be classed when received. All Hay that is sent for inspection under the Rules of the Board shall be graded, and each separate bale marked with its respective grade immediately when taken from the car in which it is sent to this city. **Final inspection.** The final inspection and plugging, in order to ascertain the sound condition of each bale, can take place at any time subsequent, or at the time of shipment.

Certificates. **Fees.** All certificates of inspection shall give the weight of each bale of Hay weighed and inspected. The expenses for inspection shall not exceed thirty (30) cents per ton of two thousand (2,000) pounds, and shall be divided equally between buyer and seller.

REQUIREMENTS FOR GRAIN WAREHOUSES,

IN ORDER THAT THEIR RECEIPTS SHALL BE REGULAR, FOR DELIVERY ON GRAIN CONTRACTS.

ADOPTED BY THE BOARD OF DIRECTORS OF THE BOARD OF TRADE.

IN FORCE JANUARY, 1882.

First, The proprietors or managers of such warehouses shall be in unquestioned good financial standing and credit. **Proprietors must be in good credit.**

Second, Such warehouses shall be so situated that they can be conveniently approached by vessels of ordinary draught, and are connected by railroad tracks with one or more of the eastern railway lines. **Location.**

Third, They shall be provided with modern improvements and appliances for the convenient and expeditious receiving, handling and shipping of grain in bulk. **Facilities.**

Fourth, The proprietors or managers shall honestly and cordially coöperate with the system of registration of warehouse receipts as established by law, and furnish to the Registrar all needed information to enable him to keep a correct record and account of all grain, together with the grade thereof, received and delivered by them daily, and of that remaining in store at the close of each week. **Coöperation with registration system.**

Fifth, The proprietors or managers of such warehouses shall promptly, by the proper publication, advise the trade and the public of any damage to grain held in store by them, whenever such damage shall occur to an extent that will render them unwilling to purchase and withdraw from store, at their own cost, all such damaged grain. **Damage to grain to be reported.**

Warehouses may be declared no longer "regular."

Sixth, Any important change in the conditions of any warehouse, or disregard or evasions of the above requirements, shall at any time be a sufficient cause for declaring any such warehouse no longer a regular warehouse within the meaning of the Rules of the Board of Trade.

REQUIREMENTS FOR WAREHOUSES

FOR THE

STORAGE OF PROVISIONS,

In order that their Receipts may be Registered and Deliverable as "Regular" on Contracts for the Sale of Provisions under the Rules of the Board of Trade.

ADOPTED BY THE BOARD OF DIRECTORS. IN FORCE JANUARY, 1882.

Storage to be approved by Board of Directors.

First, The place of storage shall be such only as is approved by the Board of Directors, who shall consider its location and facilities for handling, receiving and shipping this class of property.

Proprietors must be in good credit.

Second, The proprietors or managers of such warehouses shall be in unquestioned standing as to financial responsibility and integrity.

Coöperation with registration system.

Third, The proprietors or managers of such warehouses shall agree to honestly and cordially coöperate with the system of registration as adopted by the Board of Trade, and furnish the Registrar all needed information to enable him to keep a correct record and account of all provisions in store in their respective places of storage; and shall report to him on the sixteenth day of each month the amount or quantity of provisions held in store by them respectively at the close of business of the previous day, whether said property is their own or held by them for account of others, and whether represented by outstanding warehouse receipts or otherwise. Said reports shall be made on a form of blank provided by the Registrar of Provisions, and shall be signed by the person, firm or corporation having said property in charge, and shall be sworn to by either the person

Monthly reports.

Form of reports.

Reports to be sworn to.

so signing or some person in their employ having personal knowledge of the facts upon which the report is based. The property so reported shall be correctly embraced under the heads or descriptions provided for in said form of blank.

Damage to property to be reported.

Fourth, All such warehouse proprietors or managers shall promptly report to the said Registrar, as the same shall come to their knowledge, any information touching the condition of any property held in store by them, under registered warehouse receipts, that will tend to impair its value, and which it may be important and proper should be known to the trade.

Bond.

Fifth, All proprietors or managers of warehouses for the storage of provisions shall, before the same shall be declared "regular" under the Rules of the Board of Trade, file with the said Board of Trade a satisfactory bond for such an amount as may be deemed proper in each particular case; said bond to be in the form and conditioned as provided in the Rules of the Board of Trade, and shall provide that all receipts issued for property by such warehouse proprietors or managers shall state on their face that in case such receipt shall have been registered by the Registrar of the Board of Trade, such registration shall be canceled by said Registrar before the property represented by the receipt shall be deliverable.

Cancellation of registration before removal of property.

Warehouses may be declared no longer "regular."

Sixth, Any regular warehouse may, for good and sufficient reasons, satisfactory to the Board of Directors of the Board of Trade, be declared no longer a regular warehouse for the storage of provisions under the Rules of the Board of Trade: *Provided*, property already in store in such warehouse shall continue to be regular on delivery so long as it remains intact in such warehouse.

Proviso.

INDEX.

Act of Incorporation 3
Objects of the Association 7
Rule I. Government and Elections 9
II. Duties of President 11
III. Duties of Vice-Presidents 12
IV. Powers and Duties of the Board of Directors 12
V. Powers and Duties of Board of Real Estate Managers 21
VI. Duties of Secretary and Assistant 24-5
VII. Duties of Treasurer 26
VIII. Duration of Offices 26
IX. Committees of Arbitration and Appeals 27
X. Special Committees 31
XI. Memberships 31
XII. Messengers 32
XIII. Visitors 32
XIV. Complimentary Tickets 33
XV. Brokers; and Commission Rates 33
XVI. Annual Meeting 38
XVII. Special Elections 39
XVIII. Annual Assessment 39
XIX. Appropriations 40
XX. Irregular Trading 40
XXI. Smoking 41
XXII. Seal 41
XXIII. Quorum 41
XXIV. Margins on Time Contracts 41
XXV. Regular Deliveries 46
XXVI. Rights of Parties on Contracts 51
XXVII. Failure to Deliver or Receive on Contracts 53
XXVIII. Distilled Spirits 55
XXIX. Provisions 58
XXX. Sale of Provisions 62
XXXI. Tares 67
XXXII. Former Rules—Provisions in Regard to 67
By-Laws, Rules of Order and Proceedings 69
Regulations Governing the Inspection of Flour 73
Rules Governing the Inspection of Grain (State Inspection) 78
Regulations Governing the Inspection of Provisions 83
Requirements as to the Cut and Packing of Hog Products 87
Regulations Governing the Inspection of Flax Seed 95
Regulations Governing the Inspection of Hay 98
Requirements for "Regular" Grain Warehouses 99
Requirements for "Regular" Provision Warehouses 101

116-671

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FILED
JAN 8 1886.
JAMES H. McKENNEY,
CLERK.

IN THE

SUPREME COURT OF THE UNITED STATES,

OCTOBER TERM, A. D. 1885.

NO. 1193.

EDWARD M. HIGGINS AND FRED F. GILBERT, PARTNERS, ETC.,
vs.
JAMES McCREA.

Error to Eastern Division of Northern District of Ohio.

Argument for Plaintiffs in Reply to Brief and Argument for Defendant in Error.

CHARLES C. BONNEY, Chicago,
and FRANCIS J. WING, Cleveland,
Attorneys and Counsel for Plaintiffs in Error.

CHICAGO
PRINTED BY THE CHICAGO LEGAL NEWS COMPANY 175 MONROE STREET.
1885.

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CHICAGO
PRINTED BY THE CHICAGO LEGAL NEWS COMPANY 175 MONROE STREET.
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CONTENTS.

What the Court charged........................ 6
All the evidence brought up...................... 7
But not necessary................................ 9
Jury not permitted to pass on the question........10
Dealing with the bill "too curiously".............11
The exceptions ample and in due form...........11
The law of substitution. Chancellor Kent's rule....15
The point immaterial in this case................17
The contracts "marked themselves"..............18
Summary of the argument.........................19

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HIGGINS & GILBERT *vs.* McCREA.

Error to E. Div. N. Dist. Ohio.

REPLY ARGUMENT FOR PLAINTIFFS.

I.

MAY IT PLEASE THE COURT:

We are not surprised that the learned counsel who had the courage to admit that their client, throughout the transactions involved in this case, was engaged in a deliberate attempt to violate the laws against gambling, and who yet had the extraordinary good fortune to walk out of court with a verdict and judgment in favor of their client for more than $22,000, notwithstanding it appeared conclusively, as we think, that the plaintiffs from whom he obtained that recovery, had been engaged in an honest and earnest endeavor to comply with what they believed to be valid and *bona fide* contracts, made according to the due course of trade, should be inspired to advance in this court to the bolder claim that the injustice which the plaintiffs have suffered and the advantage which the defendant has obtained, shall be here upheld by the barren technicalities of practice which they invoke.

The learned counsel have overlooked the office of legal technicalities. They were for the most part invented, not to defeat justice, but to promote it ; they are to be used as hindrances to wrong, not as obstructions to the right. But the earnestness and zeal with which learned counsel insist that the bill of exceptions is not complete, and that the exceptions are too narrow, and the errors assigned insufficient, show how well they are aware of the fact that unless they can find protection in such considerations, the judgment of which we complain is certain to be reversed.

The learned counsel do not state our position correctly. We do not contend that the court erred in charging the jury that the evidence in the case did not show a compliance with a certain rule of the Board of Trade, for the court did not so charge.

The exact words used by the court below in charging the jury were, "*I instruct you as a matter of law that there was not a valid substitution.*" Record, p. 88.

The words "as a matter of law" seem to have been dropped in transcribing the charge for the bill of exceptions, and so defendant's counsel argue that the charge of the court was upon the weight of the evidence. *But merely omitting the name can not change the character of the picture.*

While it is true that the court has a right to advise the jury in relation to the facts, it has no right, as to such matters, to control and direct them. We complain that the court erred in telling the jury that the question whether the plaintiffs had or had not complied with a certain rule of the Board of Trade, which was and is in truth a question of fact, was on the contrary, a question of law, and in wholly withdrawing that question from the jury and deciding it for them and in their stead. If the question were one of law, the court had the right to bind the jury absolutely by its opinion and charge on the subject. But if it were a question of fact, or a question of mixed fact and law, it belonged to the province of the jury, and all that the court had a right to do was to advise the jury of such views as the court might entertain, leaving them free to decide the question by virtue of their superior right, authority and province, according to their own convictions of truth and duty. That the court did not do.

But the learned counsel say that the bill of exceptions does not *purport* to contain all the evidence in the case, but only its *substance*. To this we reply that a very casual inspection of the record will show that the bill of exceptions manifestly does contain all the evidence in the case; what it seems to omit, according to the contention of the learned counsel, is the customary formal *statement* that it contains all the evidence. The bill of exceptions was made up by the counsel on both sides, not only with the approval, but subject to the control and direction of the trial court. That bill of exceptions was made up with the expectation, on the part of all the persons engaged in its preparation, that it would be presented to this court as a basis of an application for a reversal of the judgment below. It was therefore their duty faithfully to see that it did set forth and present whatever should be material for this court to know. A suppression of any material matter in the case would be in the nature of a change of the facts, and inconsistent with perfect candor towards this court. But this court will presume that all the persons engaged in the preparation of the bill, intended to discharge their duty and did discharge it, unless the contrary appears, and therefore will not, without just cause, be astute to discover what might possibly be construed into a defect in the record.

It is not enough, in such a case, that the court should see that by some physical possibility there may have been evidence not preserved in the record. There must be a presumption arising on the face of the record that what may have been material evidence on some points, is in truth wanting. But the learned counsel have not been able to suggest any particular point on which any evidence has been omitted. Their ingenuity and imagination were not fertile enough to suggest something which may have been proved on the trial, but which has been omitted from the record. Thus their objection to the bill of exceptions fails for want of particularity. It is void, because it is without point.

And there is another complete and conclusive answer to the suggestion that the bill of exceptions is incomplete. If for want of a mere formal *statement* that it contains all the evidence in the case, a presumption arises that there may have been some evidence which has not been preserved; then we call the attention of this court to the fact that the evidence which the record does contain completely meets and rebuts the presumption that there could have been in the case any other evidence than that which is preserved. Let this court try to imagine some evidence produced on the trial and not preserved in the bill of exceptions and the court will find itself drawn irresistibly to the conclusion that there is a necessary implication from the face of this record, that all the evidence produced on the trial material to the questions here to be reviewed is preserved in the record. The counter presumption fully meets and overcomes the presumption for which defendant's counsel contend on the authorities cited by them. The court will observe that the cases cited for defendant in support of the point are decisions of the local courts, and are not as broad as the application counsel seek to make. The Ohio court does not declare simply that it is insufficient if the *substance* of the evidence be stated; it would be absurd in fact if it did so declare, for before stenography became common in legal proceedings, nothing was ever stated in bills of exceptions but the substance of the testimony, except in rare cases in which the questions and answers were taken down *in hæc verba.*

But there is another and a better answer to the objection that the bill of exceptions does not purport to contain all the evidence. *It is not necessary.*

The bill of exceptions should contain only so much of the testimony, or such a statement of the proofs made or offered, as may be necessary to explain the bearing of the rulings upon the issue involved.

Lincoln v. *Claflin*, 7 Wall. 132.
Worthington v. *Mason*, 11 Otto, 149.

This, we think, will dispose of the objection.

Our reason for contending that the evidence is fully set out, being not so cumbersome or voluminous as to violate the practice of this court, is that we desire to secure the justice to which we think the plaintiffs are entitled, without the trouble, expense and delay of another trial below.

Again the learned counsel incorrectly state the point of our objection. It is not that the jury found contrary to the evidence, on the question of the fulfillment of their contract by the plaintiffs, although as a matter of fact their finding on that point was clearly against the weight of the evidence, but our objection is that the jury, which as we say would have found for us on that issue if they had been left at liberty so to do, *were not permitted to find a verdict on that point at all;* they were simply directed to return a verdict on that point in accordance with the rulings of the court.

This court will observe that the court below did not proceed to comment upon the evidence, and to express to the jury its views and opinions of the weight and credibility of the testimony. Not at all. The court simply assumed to decide that the plaintiffs had failed in their case, and in effect told the jury to return a verdict accordingly.

Upon the present record, it would be sufficient to secure a reversal of the judgment below, for this court to see merely the fact that there is evidence in this record *tending* to show a compliance by the plaintiffs with their undertakings for the defendant. For if there be in the record any evidence so *tending*, then the direction of the court below was wrong, and the judgment will be reversed.

The point that the exceptions to the charge are insufficient, and the argument that no exception was taken to that portion of the charge which is contained in the bill of exceptions, is admirable—for the plaintiffs. It shows, may it please the court, that we can not be any more certain that this court will reverse the judgment below, than are the learned counsel for the defendant, provided they can not prevent this court from reaching and adjudging the merits of the case.

The learned counsel say that the phrase, " the court explained what would and what would not constitute a gambling contract, to which no exceptions were taken, and then said, *among other things not excepted to,*" followed *in hac verba* by the portion of the charge of which complaint is made, and concluding with the specific objections taken and saved, clearly means, not that the plaintiffs objected and saved their objections to that portion of the charge which they set out in their bill as objectionable, but that they do not take any exceptions to that portion of the charge of which they complain.

We have heard something about the certainty which is required in indictments, and in pleas in abatement, or to the jurisdiction of the court, and the like, but this is the first instance in which we have heard it gravely contended that a common bill of exceptions in an ordinary civil case must be certain to every intent in particular, and exclude every conceivable doubt on every material point to entitle it to a hearing in a court of last resort. We respectfully submit that " certainty to a common intent in general " is all that has ever been required in the practice of the courts touching bills of exceptions, and that all the requirements of that rule are abundantly met by the bill of exceptions in this case.

But it is urged by the learned counsel that the *exceptions* set forth in the bill are not sufficiently specific to be available. Let us see. The part of the charge of which complaint is made is set forth *in totidem verbis.* Then follows a statement of the grounds or reasons upon and for which the plaintiffs object to that portion of the charge. What are they, and what do they mean?

The first complaint is that the charge allows the defendant to recover, notwithstanding his confession of record that he intended to gamble. Could whole pages of amplification make any clearer than this statement the claim of the plaintiffs that the court should have charged the jury that the defendant's confession that he intended to gamble, constitutes in law a bar of his claim ? We think not.

The second complaint is, that the charge allows the defendant to recover in virtue of the plaintiff's innocence, a verdict for what he says were gambling advances. Again we ask, could any language make more plain than this, the claim of the plaintiffs that the court should have charged the jury, that if they believed from the evidence that the plaintiffs had acted justly and honesty, while the defendant had acted corruptly and unlawfully, the defendant could not, as a matter of law, be entitled to recover his advances by virtue of the plaintiffs' innocence ? We think not.

The plaintiffs' third complaint was, that the charge takes from the jury the pure question of fact whether the plaintiffs substituted other contracts for those canceled by offsets, and usurps the province of the jury by assuming to find that fact for them, and to make it a bar to the plaintiffs' claim; whereas the jury had a right to find that fact the other way, and to bind and conclude the court by such finding. And again we ask, whether any additional words could make more plain the claim of the plaintiffs that the court should have charged the jury that it was exclusively within their province to find from the evidence whether or not the plaintiffs had complied with their contract with the defendant, and whether or not they had effected the substitution of the contracts in question, in compliance with the rules and usages of the Board of Trade? And again we answer that we think not.

The fourth objection to the charge is, that it instructs the jury, in effect, that they may base their verdict upon either of two inconsistent positions taken by the defendant in his amended answer and counterclaim, instead of directing the jury that the defendant must elect to take one of the two positions. Is not this, in effect, plainly asking the court to charge the jury that the defendant can not, in the same breath, be allowed to insist that the plaintiffs' claim be defeated, because it is tainted with gambling; and that he be allowed to recover his advances to the plaintiffs, not as money lost at gaming, but as money advanced on valid contracts which had been canceled when he was ignorant of their cancellation? We think it is.

The fifth objection to the charge is, that it directs the jury with respect to a finding of fact, upon which there was conflicting testimony. Is not this the exact equivalent of a request to the court to withdraw its charge that as a matter of law the plaintiffs are not entitled to recover, and to charge them that the question at issue is one which is within their province, and which it is their right and duty to determine according to their own view of the evidence? We think it is.

The sixth objection to the charge is that there being no proof of any damage suffered by the defendant by reason of the acts or omissions of the plaintiffs complained of, it directs the jury that in the event that they find the transactions to be other than gambling transactions, they must render a verdict for the defendant on his counter-claim for the amount of money advanced to the plaintiffs. Is not this the equivalent of a request to the court to charge the jury that, no evidence whatever having been introduced to show any resulting damage to the defendant as the direct and proximate cause of the substitutions of contracts described in the evidence, there was nothing on which they could render a verdict in favor of the defendant upon his counter-claim? And does it not plainly call the attention of the court to the fact that the correct rule of law for the assessment of damages in such cases had not been stated by the court to the jury? We think it does.

Each one of these objections is specific; each one points to a particular defect of the charge; each one is equivalent to a request of the court to supply the defect and remove the ground of objection.

To contend that the court below did not know what was the fighting ground of the case; and did not understand what the plaintiffs' counsel contended to be the law of the case; and did not have "a fair opportunity" to consider and act upon the law applicable to the points in controversy, is not complimentary to the intelligence of that court. We think that the case below fully complies with the rule stated by Mr. Justice Swayne in the case cited on page 21 of the defendant's brief.

It is the duty of courts of justice to be active and zealous in the enforcement of rights, and the prevention of wrongs. If a suitor be striving to obtain some advantage by means of the forms of law, we think the courts of justice should meet him with a strict and rigorous construction, both of the law and the fact, and should interpose against him the shield of whatever technicalities may be at command. And, on the other hand, we think that if a suitor be seeking honestly and in good faith the just fruits and results of upright effort in a worthy cause, he should be met with liberal intendments and presumptions, both of fact and of law. Perhaps the failures of justice in individual cases occurs more frequently from overlooking the rule that "circumstances alter cases," than from any other single cause. The law is not, and ought not to be the same toward the just and the unjust. To the former it should be a shield; against the latter it should be a sword. That rule may almost be called the crown of equity. Applying it to the present case, we insist that on the face of this record the conduct of the plaintiffs is fair and just, and above reproach in every respect, while that of the defendant is, by his own confession, in willful and persistent violation of the law. We therefore think that the law of the land requires that against him justice should be a sword to prevent the unrighteous gain he seeks to reach; while in favor of the plaintiffs it should be a shield to protect them against the defendant's demand, and a strong hand to enable them to recover the money which they paid out on the defendant's account and at his request.

II.

THE SUBSTITUTION OF THE CONTRACTS SEEMS TO REQUIRE A FEW WORDS OF FURTHER COMMENT.

The learned counsel for defendant misapprehend, both the force and effect of the substitution rule of the Board of Trade, and the conduct of the plaintiffs under it. We can not properly construe that rule, unless we have in view the state of the law to which it applies. What was the law prior to the adoption of the rule, and in the light of which the rule must be construed?

Ever since the decision of Chancellor Kent, in *Nourse* v. *Prime*, Plaintiffs' Opening Brief. 72, 73, it has been the settled American rule, that *"It is not necessary for a broker to preserve the identical stock bought by him, for a particular order; that its identity is immaterial; and that the broker's duty is simply to retain on hand, such stock, of kind and quantity sufficient to provide for the order; and that, subject to this limitation, he may buy and sell as he pleases and change the stock at will."*

It is obvious that the same principle applies in a great variety of transactions. For instance, if a coal dealer receive orders from a number of customers, and, in pursuance of such orders, purchase coal of a given quality and price to fill all those orders, and receive it into his yard for delivery as they may from time to time request, or at fixed future dates, it is manifest that no one of his customers would have a right to any particular ton of coal in the quantity, but that each would be entitled to the amount purchased by him out of the whole. It is also plain that in such a case it is important that the dealer do actually purchase a sufficient quantity, of the proper quality, to fill all the orders received. Should he fail to do so, he would be liable to his customers for whatever damages they may sustain by reason of the breach of contract. If, when the call for delivery of the coal purchased comes in, he does not have it on hand, he must, at his own risk and peril, obtain and deliver it, or be answerable to the purchaser for the direct and proximate damages which he may sustain from the breach of the contract.

That the same rule applies to transactions in grain, sugar, and indeed all the necessaries of life in which purchases and sales are made, not of specific articles, but according to quality and price, is too manifest for argument.

Nourse v. *Prime*, 4 Johns. Ch. 490, 7 Ibid. 69.

Thus, the right of the plaintiffs to buy and sell as they might please, and to change the stock of grain on hand at will, depends not on the rule of the Board of Trade, but on the law as declared by Chancellor Kent and since then generally followed. What then was the occasion for the rule and what is its force and effect ? Like thousands of American statutes, *it simply affirms the common law*. It recognizes the rule.

Its language might be more lucid, and its provisions more clear and certain; but whatever obscurities may appear on the face of the rule, without reference to the doctrine of law on which it rests, readily disappear in the light of that doctrine. The provision of the rule that in case of a substitution of contract the commission merchant shall be held to "guarantee" the fulfillment of all contracts made for account of such principal, which have been so transferred, and shall be held liable to such principal for all damages or loss resulting from such substitution, really adds nothing to the law as it stood before the rule. For, as above shown, in case of a failure of the agent to deliver the property on the delivery day, he would, as a matter of law, be answerable for the direct and proximate damage resulting from his failure. In effect, the rule merely declares that what have come to be known as "off-sets," and "ring settlements," are proper and legitimate methods of exercising the rights which the commission merchant has under the law of the land. How admirably that method of adjustment is adapted to promote commercial transactions, and how perfectly in harmony it is with justice and fair dealing, is illustrated in the appendix to our opening brief.

How, then, was the question, whether the plaintiffs did in fact have the property purchased for account of the defendant, at all times coming to them from some responsible parties, material to the issues involved in the trial below? We answer that it was in no way material, except with reference to the charge that the transactions were fictitious and void for gambling. In answer to that question, it became not only important and material, but absolutely indispensable, that the plaintiffs should show that they had not been merely betting on the price of the property involved, but had actually purchased it, and had always been liable for it, from the day of a compliance with the defendant's order, to the time when the property was received and paid for. To meet that necessity, the plaintiffs exhibited in extraordinary detail all their business transactions of the kind of those made for defendant, during the period involved in the controversy.

As we said in our Opening Brief, we now repeat, that we do not believe that a more clear and convincing exhibit of the perfect honesty, good faith and regularity of a series of business transactions was ever made in a court of justice, than that which the plaintiffs submitted to the court below, and which is contained in the record in this cause, being printed in full, under the rule, as a part of the pleadings.

But the learned counsel for defendant contend that the evidence shows that no substitution was in fact made. To this several answers may be given. The evidence conclusively shows the contrary. (Record, 96.) There was no particular mark put on the substituted contracts. "THEY MARKED THEMSELVES BY BEING OPEN." The oldest customer takes the oldest property of the kind purchased by him; and he is also entitled to the first property received on a delivery day.

But the learned counsel quote in their brief certain statements of the plaintiffs in the course of their several examinations, to the effect that Higgins & Gilbert were the parties to whom McCrea looked for the fulfillment of his contract. We particularly commend these statements to the attention of this court, because they constitute such a strong corroboration of the sincerity and honesty of the plaintiffs in the business involved. Their statements were literally true, and the seeming contradiction is easily explained.

The evidence clearly shows that defendant never inquired who the parties were from whom the purchases had been made on his account. He did not know the name of one of them. He did not in fact look to them for a fulfillment of the contract or any part of it. He looked alone to Higgins & Gilbert, and they stated the exact truth when they so testified. But when they were called upon to show whether they had back of them principals from whom the property purchased was actually coming in good faith, they looked into their books, and having dealt in strict conformity to the rules of the business, were able to pick out and designate the persons who, as a matter of fact, under the law would stand as the substituted parties in case any occasion for a recourse to them had arisen. No occasion for such recourse could ever arise except in the contingency of the failure of the commission merchants. In that event it would undoubtedly be competent, under the proper judicial direction, to trace the substitutions, and dispose of the property coming, according to the rule of priority so lucidly explained by the plaintiffs in their testimony.

III.

In conclusion we reaffirm,

That the counter-claim on which the defendant recovered, was barred by his confession of record that he had willfully acted in violation of law.

That his counter-claim is also barred by the fact that his payment of the money claimed was wholly voluntary.

That it is also barred by the fact that it was paid out by the plaintiffs in pursuance of his requests.

That it is also barred by the fact that the money was received and disbursed by the plaintiffs in exact conformity to the provisions of the contract between the parties.

That the testimony of the defendant in his own behalf is neutralized by its self-contradictions, and by its conflict with his letters and telegrams.

That the defendant elected to make the plaintiffs his own witnesses; and also elected to make their depositions, upon his examination, a part of the pleadings and record in the case, and is conclusively bound thereby.

That the weight of the evidence merely, is overwhelmingly in favor of the plaintiffs' claim.

That the record contains a demonstration of the strict and faithful compliance of the plaintiffs with the established rules, customs and usages of the business.

That the objection of the defendant to the substitution of contracts is wholly immaterial to the merits of the case. It relates merely to the manner in which the business was done, and not to any vital element of the transactions.

That, as things which are equal to the same things are equal to each other; and as the plaintiffs actually received and paid for the exact quantity and quality of property purchased for the defendant, on the date fixed for its delivery, there is nothing in the case on which the defendant can base a claim for damage, or a right to repudiate the transaction.

That the defendant having declared in his sworn answer that he dealt with the plaintiffs, not as agents but as principals, is estopped by that statement to question the matter of substitutions involved in the case.

That having failed to point out upon the trial any particular respect in which the substitutions were defective or non-compliant with the rule, the objection is void for want of certainty and can not be urged in this court.

That the province of the jury was clearly invaded, because the court did not charge them how they should determine, according to the evidence, the question on which the case finally turned, but wholly withdrew that question from them and decided it for them, not only in violation of law, but contrary to the fact as conclusively established by the record.

That the transactions in question bear no resemblance to those prohibited by the Illinois Penal Code as gambling contracts.

That in such cases, each party if governed by his own intentions and good faith. He who intends to violate the law and gamble, is under the ban of the law, and can assert no right in relation to the transaction. While he who, on the other hand, intends to act honestly and in conformity with law, may assert his rights and enforce the contract.

That purchases and sales for future delivery, if made in good faith, are as valid as any other form of contract known to the law.

That the general doctrines of usage and custom, applicable to this case, all concur in supporting and upholding the conduct of the plaintiffs and their right to recover.

That the time has now arrived when this court will fully recognize the rules, regulations and well established customs and usages of the great commercial exchanges of the country.

And that as the record now before the court contains such evidence in the pleadings, depositions, testimony and exhibits, as conclusively establishes the rights and liabilities of the parties; and excludes the idea that any verdict could ever be recovered against the plaintiffs under a proper statement of the law; and leads to the conviction that no judgment for the defendant or against the plaintiffs would be allowed to stand, not only should the judgment below be reversed, and the cause remanded, but the court below should be peremptorily directed to enter judgment *non obstante veredicto* for the plaintiffs, for the amount of $31,644.31, being the sum due to them, with the interest thereon to be computed.

All our points may be resolved into this: The plaintiffs have suffered a great wrong, and the court below has not only denied them any remedy, but has doubled the wrong. We look to this court with implicit confidence that it will declare that in this country, the law is the minister of justice, and not its enemy.

The great importance of this case to the Chicago Board of Trade seems to make it highly proper that an opportunity be given to that body to be heard before this court upon the questions involved. We have accordingly expressed this view to the learned counsel of the Board, that he may feel at liberty to file an argument in the case, if he shall so desire.

My learned associate will also submit some views in reply. Our distance from each other, and the shortness of the time limited for the submission, has prevented us from conferring, and perhaps uniting our views in a single document.

CHARLES C. BONNEY,

Counsel for Plaintiffs in Error.

116-61

FILED.
DEC 30 1885
JAMES H. McKENNEY.
CLERK.

SUPREME COURT

OF THE UNITED STATES.

OCTOBER TERM, 1885

No. 1193.

EDWARD M. HIGGINS AND
FRED. F. GILBERT, Partners, &c.

vs.

JAMES McCREA.

IN ERROR TO CIRCUIT COURT, NORTHERN DISTRICT OF OHIO.

BRIEF AND ARGUMENT FOR DEFENDANT IN ERROR.

STEVENSON BURKE, and
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Counsel.

SHORT & FORMAN, PRINTERS CLEVELAND, O.

The Supreme Court of the United States.

OCTOBER TERM, 1885.

EDWARD M. HIGGINS
AND
FRED. F. GILBERT,
Partners, &c.,
Plaintiffs in Error,
vs.
JAMES McCREA,
Defendant in Error.

No. 1193.

STATEMENT OF THE CASE AND ARGUMENT FOR THE DEFENDANT IN ERROR.

The plaintiffs in error commenced their action in the Circuit Court of the United States in August, 1883, against the defendant, James McCrea, to recover about thirty thousand dollars and interest claimed to be due from him to them upon certain pork and lard transactions which were claimed to have been conducted by the plaintiffs as brokers for McCrea upon the Board of

Trade in Chicago. The pleadings in the case, upon which the action came on for trial, were substantially as follows:

THE PETITION.

RECORD 2.

Plaintiffs say they are partners doing business under the name and style of Higgins & Gilbert, and that they and each of them are citizens of the State of Illinois; that the defendant is a citizen of the State of Ohio.

* * * * * *

Plaintiffs further say that they are and have been for more than one year last past, members of the Board of Trade in the City of Chicago. * * * * And for their first cause of action against the defendant they say that on the 19th of May, 1883, the defendant requested and directed the plaintiffs to make a contract in his behalf, and for his account for the purchase of one thousand barrels of mess pork at nineteen dollars and fifty cents per bbl., and one thousand tierces of prime steam lard at eleven and three-quarter cents per pound, the same to be delivered by the vendor at any time in the month of August, 1883. * * * * That in accordance with such request and direction, as *brokers* and *agents* for said defendant, plaintiffs made such contract of purchase for the defendant and upon his account. And plaintiffs further say: that on the 1st of August, 1883, in *execution of said contract*, and in accordance with the conditions thereof and terms thereof, the amount of pork and lard mentioned therein * * * * was tendered to the plaintiffs, * * * * who received said pork and lard and advanced for said defendant in payment thereof the sum of fifty-eight thousand, five hundred and fifty-three and $\frac{34}{100}$ dollars. * * * * And plaintiffs say: that on said first of August they gave the defendant full * * * notice of their actions and doings in his behalf with respect to said pork and lard, and that the same has been received and paid for by them on his account, and that the same was held by them subject to his orders and directions upon his reimbursing them for advances so as aforesaid made by them on his account. * * * * Said defendant having failed to give any directions to the contrary, and having failed to reimburse plaintiffs for the advances so as aforesaid made by them said plaintiffs caused said pork and lard to be sold according to the rules and by-laws and regulations of said Board of Trade, and plaintiffs received as the result of said sale the sum of forty-two thousand, six hundred and fifteen and $\frac{97}{100}$ dollars, for which sum the defendant has received credit from the plaintiffs. * * * * And that by reason of the premises the defendant is indebted to the plaintiffs on this cause of action, in the sum of nine thousand, three hundred and sixty-one and $\frac{70}{100}$ dollars with interest thereon from the 1st of August, 1883.

Second Cause of Action.—This cause of action is entirely similar to the first cause of action just quoted, and relates to further transactions claimed to have been made by the plaintiffs as agents and brokers, for the defendant, in the purchase of certain other quantities of pork and lard.

Third Cause of Action.—The third cause of action consists in a claim made by the plaintiffs for commissions for doing the business referred to in the first and second causes of action.

Wherefore the plaintiffs claim judgment for thirty-one thousand, six hundred and forty-four and $\frac{31}{100}$ dollars with interest from the 1st of August, 1883.

AMENDED ANSWER OF DEFENDANT.

RECORD 80.

The original answer filed by the defendant was amended prior to the trial, and the action came on for trial upon the answer as amended.

In the answer as thus amended, the defendant dedenies the indebtedness claimed, and sets up that the transaction was one occurring between the parties upon margins, and claims that it was an illegal transaction under the laws of the State of Illinois, and further says: * * * * That the plaintiffs reported to this defendant that they had bought the pork and lard specified in the several causes of action in said petition; but this defendant avers that they did not actually purchase any pork and lard, nor contract for the actual delivery of any pork and lard, but whatever the form of said contracts they were in fact options, and whether or not they made any contract or contracts with other persons in regard to such transactions, this defendant has no other information than such as he has derived from the plaintiffs themselves; and upon such information he states the fact to be that the plaintiffs did, on or about the 19th of May, enter into contracts in their own name, but as they now claim, upon the account of this defendant, with the following named persons and firms, to wit: C. C. Elridge & Co., Cudahy & Stephens, J. P. Taylor, W. H. Silverhorn, Blair & Blair, Fowler Brothers, Poole, Kent & Co., G. D. Baldwin & Co., L. M. Studwell and William Kirkwood. * * * That after the making of said contract, it became and was the duty of said plaintiffs as the agents of this defendant, to hold said contracts for his benefit, and to entirely refrain from using said contracts for their own advantage, or in any manner disposing of the same without the consent of this defendant. But the defendant alleges the fact to be that after said plaintiffs had so made said contracts they did on or about the dates following, to-wit: May 24th, * * * * * without notice to defendant, and without the consent or knowledge of this defendant, sell and dispose of the same and convert the proceeds thereof to their own use and wholly and entirely release the parties with whom they had made said contracts from the obligations thereof, and defendant says that at no other time after the 16th day of June, 1883, did the said plaintiffs hold any contracts whatever for the account of this defendant for pork and lard deliverable in August, or at any other time, but that long prior thereto, as above stated, the plaintiffs had wholly released and cancelled said contracts, and converted the same to their own use as aforesaid.

The answer also expressly denies and puts in issue the allegation of the petition that the plaintiffs acted in accordance with the rules and regulations of the Chicago Board of Trade, and by way of

COUNTER CLAIM

the defendant charges that being in total ignorance of the cancellation of the contracts made upon his account and their surrender, that he continued to remit and pay to the plaintiffs upon their request for a long time preceding the commencement of this action, various sums of money to keep up his margins upon the pork and lard which he supposed and the plaintiffs represented that they held upon his account. He alleges, that in point of fact, they held no contracts upon his account; that their representations in that respect were deceptive, and that he was led by their deceptive conduct to pay over to them very large sums of money, amounting in all to about twenty thousand dollars, and by way of counter-claim, and relying upon these facts, the defendant claims that upon the plaintiff's representations to him that they had made said contracts for his benefit, and were holding and carrying the same for him, he paid to the plaintiffs from time to time various sums of money as margins on said contracts, as follows:

In the year 1883, May 10th, $1,875.
May 23d, $4,000.
May 26th, $2,000.
June 4th, $3,000.
June 9th, $3,000.
June 12th, $3,000.
June 14th, $1,000.
June 15th, $1,000.
June 15th, $1,000.

Making, in all, an aggregate of nineteen thousand, eight hundred and ninety-seven dollars.

The defendant further says: that all of said money was paid to the plaintiffs on their request, and upon the consideration of said plaintiffs carrying and protecting for this defendant, the said option contracts which had been made for his benefit for pork and lard deliverable in August, 1883; that the said plaintiffs did not carry and hold said contracts for the benefit of this defendant, as they were bound to do as his agents, but as hereinbefore stated, to-wit: on or about the date stated in the above answer, plaintiffs sold and disposed of, and converted the same to their own use, and wholly released the parties with whom said contracts were made from the obligations thereof, by reason of which facts said payments were made by this defendant to said plaintiffs wholly without consideration, and upon the false representations of plaintiffs that they held said contracts, when, in fact, they had long since converted the same to their own use, and the defendant claims judgment against the plaintiffs for the sum of nineteen thousand, eight hundred and ninety-seven dollars and interest, being the money so advanced by him upon said contracts.

REPLY OF PLAINTIFFS.

To this amended answer of the defendant the plaintiffs filed their reply, putting in issue the new matter set up in the answer.

THE ISSUES.

Briefly stated then, the issue between the parties was whether the plaintiffs had made upon the account of the defendant, any valid purchases of pork and lard, and whether such contracts and trades had been kept in life, so that the defendant was bound to receive and pay for the pork and lard upon the 1st of August, 1883, and whether the plaintiffs acting as his agents, but doing the business in their own names, did receive any pay for upon his account any pork and lard whatever, upon the contracts set forth in the petition, and under which they alleged that they received pork and lard for the account of the defendant.

The affirmative of the proposition being sustained, there would be a balance due to the plaintiffs substantially as claimed in their complaint.

The negative being sustained, the defendant was clearly entitled to recover the money paid to the plaintiffs upon account of the contracts supposed to have been made by them, but which had been, in fact, cancelled and disposed of by the plaintiffs themselves.

The case was tried in the Circuit Court before their honors, Judges Baxter and Welker, and a jury, and resulted in a verdict and judgment in favor of the defendant for the amount claimed by him in his counter-claim.

The decision of Judge Baxter, which contains a very clear and concise statement of the case, and the proceedings upon the trial, is reported in

Higgins et al. vs. McCrea, 23 Federal Rep., 782.

THE BILL OF EXCEPTIONS.

RECORD 90.

The questions which the plaintiffs seek to raise are not before the court unless they have been saved by the Bill of Exceptions appearing in the record. The principal contention made by the plaintiffs is stated in the first assignment of error, and is, in substance, that the court erred in charging the jury that the *evidence in the* *case did not* show a compliance with a certain Board of Trade rule relied upon by the plaintiffs.

It is claimed that the court, in so charging, took from the jury a *question of fact*, upon which the plaintiff was entitled to their verdict. In other words, it is claimed that the court erred in stating to the jury the legal effect of the evidence before them.

Before we discuss the question of the court's action in these respects, we invite careful attention to the bill of exceptions itself, and respectfully submit:

THAT THE BILL OF EXCEPTIONS DOES NOT PRESENT THE QUESTIONS SOUGHT TO BE MADE BY THE FIRST ASSIGNMENT OF ERROR.

The question, whether the court erred to the predudice of the plaintiffs, in instructing the jury as to the legal effect of the evidence before them, can only be determined by an examination *of all of the evidence* upon which such instruction of the court was based.

The bill of exceptions by which it is sought to present the question to this court, is, we contend, fatally defective in at least two particulars:

1. *It does not purport to contain all of the evidence.*
2. The exceptions which were taken to the charge of the court, as shown in the Record, are wholly insufficient to be made available in this proceeding.

The recitals and statements of the bill of exceptions as to the evidence it contains, are as follows:

RECORD 90.

"And the plaintiffs to maintain the issue on their part gave the following evidence, to wit:"

1. "A certain rule and by-law of the Chicago Board of Trade, &c."

2. "The testimony of Edward P. Wright, who testified *in substance*, &c.," as stated in the bill.

3. "Frederick F. Gilbert, one of the plaintiffs, was produced, who testified *in substance*, as follows, &c."

4. [Record 97.] "To further maintain the issue on the part of the plaintiffs, they introduced *among others*, the following telegrams and letters."

RECORD 101.

"Whereupon, the plaintiffs rested, and the defendant, to maintain the issues joined, on his part introduced the following evidence:"

1. "The deposition of James McCrea, the defendant, who testified as follows:" * * *

2. [Record 104.] "Deposition of F. F. Gilbert."

3. [Record 155.] "Deposition of E. M. Higgins."

"And thereupon the court charged the jury, &c."

The foregoing are all the statements and recitals contained in the bill of exceptions, from which we are given any information as to whether or not it purports to disclose all the evidence which was before the court and jury, and from this analysis of the bill, it is perfectly apparent that all which it purports to contain, is the *substance* of certain testimony given by the plaintiffs and of certain further testimony, given by the defendant.

It neither expressly, nor by any reasonable implication, purports to contain all the evidence.

It recites that the plaintiff gave the following evidence, to wit: certain witnesses who testified in substance as stated; and that the defendant introduced certain witnesses and depositions as stated, but does not in any way negative the fact that other evidence than that set forth in the bill, was given by both plaintiffs and the defendant.

That such a bill is insufficient to raise any question involving the examination of *all the evidence*, is well settled by repeated adjudications.

A leading case in this court is that of Russell vs. Ely et al., 2 Black, 580. The syllabus of this case is as follows:

"A bill of exceptions which alleges that the instructions of the court laid too large a stress upon the testimony of a particular witness, should embody the testimony at length, or so far refer to it as to make it a part of the record; otherwise, *a court of error must presume that it justified the instruction.*"

Miller J., delivering the opinion of the court upon this subject, says:

"* * * But the bill of exceptions does not purport to give all that he said; and according to a well known rule, this court is bound to presume that there was that in Baker's testimony which justified the construction."

In the State of Ohio, where this case was tried, for many years the Supreme Court reviewed questions of fact; and the rule for which we contend has there been uniformly followed.

See Eastman vs. Wright, 4 Ohio St., 157.

"To enable this court to review the judgment of the court below, overruling a motion for a new trial because the verdict is claimed to be against the evidence, it must appear either *expressly* or by necessary implication that the bill of exceptions contains *all the evidence* given to the jury upon the trial."

The bill in the case just cited was very similar to the one now under discussion; the language of the bill being that the witnesses respectively

"Testified in substance," as therein set forth.

See also Ide vs. Churchill, 14 O. S., 378. Again, in Cantwell vs. the State, 18 O. S., 477, it is held:

"That a judgment will not be reversed for error in overruling a motion for a new trial, on the ground that the verdict is not sustained by the evidence, unless the record shows affirmatively that all the evidence is set forth in the bill of exceptions."

Again: in Railway vs. Probst, 30 O. S., 177, the bill of exceptions recited:

"The plaintiff, to maintain the issues on his part, offered the deposition of A. Harris, which was *in substance*, as follows:"

The court say: "we are asked to declare the verdict not supported by the evidence in this case where we are furnished with but the *substance* of a portion of the testimony. This is not enough. The reviewing court, in such a case, must have all the testimony which was produced and used on the trial before the jury, set out in the bill of exceptions. The substance only of any part of the testimony, will not meet the requirements of the rule. * * * The Supreme Court must have before it precisely the same evidence which was before the jury."

To the same effect, see cases cited in U. S. Digest, vol. 6, page 19, paragraphs 419 and 429.

We forbear multiplying authority on this proposition, and confidently submit to the court, that the bill of exceptions in the case at bar does not expressly, or by necessary implication, purport to give all the evidence upon which the court gave the charge of which complaint is now made. Tested by the well settled rules above stated, the bill does no more than state that evidence was given, tending to prove the issues. It purports to give the *substance* only of plantiff's evidence and for aught that appears in the bill, both the plaintiffs and the defendant may have given other evidence which entirely justified the charge of the court. Error is never presumed, and the maxim : *omnia praesumuntur rite et solemniter esse donec probetur in contrarium,* should be given full application in support of the judgment now in review.

The court charged the jury that the evidence did not prove a valid substitution, &c. Only the substance of a certain part of the evidence, appears in the record. This court, if necessary, must presume in favor of the judgment rendered by the Circuit Court, that other evidence was given which justified the court's action in the premises. Unless this court has before it the precise evidence which was before the Circuit Court, it cannot determine whether or not the court erred as to its legal effect ; it cannot say whether or not there was sufficient evidence to require the court to submit the question to the jury.

In the case at bar, the *entire evidence* upon which the Circuit Court acted, is not before this court, and the question, whether the evidence justified the charge given, cannot be considered.

THE EXCEPTIONS TO THE CHARGE ARE INSUFFICIENT.

Even if the bill of exceptions be treated as bringing in review the evidence, the plaintiffs at once encounter another serious difficulty in presenting the question sought to be raised by the assignments of error. We refer to the fact that the exceptions shown by the record to have been taken to the charge of the court, are entirely insufficient in several particulars, which we will briefly point out.

The charge [Record 166–7] deals with several questions, and as set forth in the record begins as follows:

"The court explained what would and what would not constitute a gambling contract, *to which no exceptions were taken*, and then said *among other things not excepted to.*"

Then follows the charge of the court as to what action the jury should take in case they find the contract to have been a gambling contract, and what action they should take if they find the contract to have been an actual bona fide contract.

All of the charge of the court upon this subject, which appears in the bill of exceptions, immediately follows the statement above quoted, and by the express statement of the bill of exceptions above cited, none of the remarks and propositions of the court were excepted to by the plaintiffs, and unless what now follows is taken as qualifying what precedes it, the bill of exceptions shows affirmatively *that no exceptions whatever were taken to any part of the charge which is set out in the bill, at the time the charge was given to the jury.*

To construe this bill fairly, we must, if possible, reconcile any apparent repugnancy, and give effect to all its statements.

As it affirmatively appears that no exceptions were taken to any portion of the charge at the time it was given, the exceptions which appear immediately following that portion of the charge which is set out in the Record [Page 167] *must be taken as referring to something which the court charged, not contained in the bill, or these exceptions must have been taken after the jury had been sent to their rooms for consultation, and had returned into court for further instructions.*

The Record upon this subject is in this form:

"This charge upon the request of the jury for further instructions, subsequently repeated to them, and the plaintiff then and there excepted to the charge of the court in the following particulars, to wit: * * * *

As nothing which is contained in the charge as given to the jury before their retirement was excepted to, these exceptions which we have just quoted must have been taken to the charge of the court when the jury returned *"for further instructions."*

Whether these exceptions, in fact, were intended to refer to something charged by the court, and not set out in the bill, or whether they are exceptions taken after the retirement of the jury, we confess is a question of some doubt, but in either case the exceptions cannot be made available in this court.

Apparently, as the bill of exceptions states affirmatively that no exceptions were taken to the charge which is therein set forth, we must assume that the exceptions appearing in the Record, [Page 167] *refer to instructions given by the court to the jury which are not set forth in the bill; and if this be the construction which the court shall give to the statements, of course, the exceptions cannot be considered.*

If, however, these exceptions were not taken until after the jury had retired, and had returned into court for further instructions, they came too late, and error cannot now be assigned upon them.

But if, the exceptions which appear in the Record are to be treated as referring to the charge which is set out in the bill, and to have been properly taken at the time the charge was given, we still contend that they are not

SUFFICIENTLY SPECIFIC TO BE AVAILABLE.

The exceptions are in this form * * * * "And the plaintiffs then and there excepted to the charge of the court in the following particulars, to wit:"

1. "It allows the defendant to recover, notwithstanding his confession of record that he intended to gamble."

2. "It allows the defendant to recover in favor of plaintiff's innocence, by giving the defendant a verdict for what he says were gambling advances."

3. "It takes from the jury the pure question of fact: whether the plaintiff substituted other contracts for those cancelled by offsets, and usurps the province

of the jury by assuming to find that fact for them, and to make it a bar to plaintiff's claim ; whereas, the jury had the right to find that fact the other way, and to bind and conclude the court by such finding."

4. "It instructs the jury, in effect, that they may base their verdict upon either of two inconsistent positions taken by the defendant in his amended answer and counter-claim, instead of directing the jury that the defendant must elect to take one of the two positions."

5. "It directs the jury with respect to a finding of fact upon which there is conflicting testimony."

6. "There being no proof of any damage suffered by the defendant by reason of the acts or omissions of the plaintiff complained of, it directs the jury that in the event that they find the transactions to be other than gambling transactions, they must render a verdict for the defendant on his counter claim, for the amount of the money advanced to the plaintiffs."

The court will observe that each one of these so-called exceptions to the charge is *directed to the charge as an entirety*. None of them, in any manner, attempt to point out and specify and indentify the particular language, or even the particular portion of the charge of which the complaint is made.

By a very familiar rule, exceptions addressed to the entire charge of the court containing various propositions, cannot be made available if there be any portion of the charge which is not subject to the exception made. Applying this rule for a moment to the charge under discussion, the court, among other things, charged the jury—Record 166—"*It is legitimate for the parties to make a contract for the delivery of property at some future period, provided they mean a real bona-fide contract, and the law recognizes the obligation and will enforce it.*"

Each and all of the so-called exceptions made by the plaintiffs are as well addressed to the proposition of law contained in the charge which we have just quoted as to any of the other several propositions therein contained; and yet it is not pretended that this portion of the charge is properly subject to any of the exceptions taken, nor do the plaintiffs now make complaint of the charge upon this subject.

In other words: the point which we desire to make in regard to these so-called exceptions to the charge, is that they amount to no more than a general exception to the charge of the court. If, instead of reciting these various reasons which the plaintiff has inserted in the bill of exceptions, the plaintiff had simply said: "*and to the foregoing charge, the plaintiffs then and there excepted,*" the court would have been as well advised as to the portions of the charge to which he objected, as it is now advised by the various reasons which the plaintiffs assign for their dissatisfaction with the charge of the court.

That exceptions of this general character, failing to point out any specific portion of the charge complained of, are entirely insufficient, has been repeatedly determined by this court, and in several of the cases to which we shall refer, the exceptions held to be insufficient, were much more specific than any presented in the case now in review.

See Lincoln vs. Claflin, 7 Wall., 38.

In McNitt vs. Turner, 16 Wall., 363, which was an action of ejectment, the court instructed the jury that the plaintiff had shown title in fee, and was entitled to recover, and the defendants excepted in this form :

"To which opinion and decision of the court the defendants then and there excepted at the time of said charge."

Mr. Justice Swayne, delivering the opinion of the court, says with reference to these exceptions :

"The chain of plaintiff's title, exhibited on the trial, consisted of many links. The exceptions should have pointed out specifically, the link or links deemed defective and in what the defect was supposed to consist, in order that the court might be duly notified and have an opportunity to correct the error if any, into which it had fallen. The exception is insufficient."

Again : see Beaver vs. Taylor, et al., 93 U. S., 46.

Again : in Beckwith vs. Beam, 98 U. S., 284, the exceptions to the charge were as follows:

" To the omission of the court to charge as requested, and to the charge of the court placing a construction upon said acts of congress, and to so much of the charge as relates to the attempted justification of the defendant under said acts, and the evidence hereinbefore detailed, the defendant excepted."

The court says : * * * *

" The exceptions to the charge as given, are too vague and indefinite to raise the question claimed in argument, * * * * the exception is scarcely more definite than an exception to the whole charge would have been. We cannot tell what specific portion of the elaborate charge concerning the evidence relied upon for justification under these acts, was intended to be covered by this general exception."

We respectfully submit that the exception in the case from which we have just quoted, was much more definite than the exception disclosed in the record of the case at bar.

In Beckwith vs. Beam, the exception did at least, inform the court that the exception was addressed to the language of the court on a particular subject discussed in the charge; and it related to so much of the charge as concerned a certain defense of justification which had been interposed by the defendant. In the case at bar, none of the alleged exceptions in any way point out or specify, or notify the court as to that portion or portions of the charge to which the party desires exception.

See also, Railroad vs. Barnell, 98 U. S., 478.

In Railroad vs. Jurey, III U. S., 584, the rule is again stated, as follows: "The exception is of no avail, unless the erroneous part be *speciffically brought to the attention of the court before the jury retires.*"

Again: in Connecticut Life Insurance Company vs. Union Trust Company, 112 U. S., 280, the court held:

"An exception to the modification by the court in its general charge, of a particular proposition submitted by one of the parties, without stating specifically the modification to which objection is made, is too vague and indefinite."

Testing these exceptions by the well-settled rule to which we have referred, we respectfully submit that none of the exceptions are available to raise the questions sought to be raised by the plaintiffs in error. They are mere general exceptions, addressed to the charge as an entirety, and unless the whole charge is erroneous in the respects complained of—and that is not here claimed—the exceptions cannot be made available.

THERE IS NO ERROR IN THE RECORD TO THE THE PREJUDICE OF THE PLAINTIFF IN ERROR.

Assuming for the time being that the questions which are sought to be made by the plaintiffs are properly before the court, let us carefully examine the proceedings upon the trial as disclosed in the Record, and as a result of such examination we confidently submit, that the entire proceeding will be found to have been perfectly regular, and that no error has been committed by the court.

ALLEGED ERRORS OF THE COURT.

Complaint is made of the rulings of the Circuit Court upon sundry points of law upon which the jury were instructed and the precise point in contention will be the better understood by a more detailed statement of the facts with portions of the evidence as it appears in the record.

BOARD OF TRADE RULE.

The plaintiffs first offered in evidence the following rule of the Chicago Board of Trade, and claimed that they had complied strictly with this rule in dealing for the defendant in the transactions set forth in the petition. This rule is as follows: [Record 90.]

RULE 26.

"SEC. 6. In case any member of the association acting as a commission merchant shall have made purchases or sales by order, and for account of another, whether the party from whom any such purchase or sale was made, shall be a member of the Board of Trade or otherwise, and it shall subsequently appear that such trades may be offset and settled by other trades made by said commission merchant, he shall be deemed authorized to make such offset and settlement, and *to substitute some person or persons for the one from or to whom he may have purchased or sold the property originally, provided: that in case of such substitution the member or firm making the same shall be held to guaranty to his or their principal* the ultimate fulfillment of all the contracts made for account of such principal which have been so transferred, and shall be held liable to such principal for all damage or loss resulting from such substitution."

The further evidence in the case consists chiefly of evidence *given by the plaintiffs themselves*, who were both present upon the trial and appeared as witnesses before the jury and we propose as briefly as possible to call the attention of the court to all the evidence given by the plaintiffs, which has any proper bearing upon the question now under discussion.

EVIDENCE OF F. F. GILBERT.

RECORD 91.

Under direct examination this witness testified in substance: that his firm purchased upon the request of the defendant, from Eldridge and Company and sundry other persons, the pork and lard mentioned in the petition, for the account of the defendant about

May 19th, 1883, and that on August 1st, 1883, equal quantities of pork and lard were delivered to the plaintiffs which they then received as they claim, for the account of the defendant although the original contracts had long before that time been cancelled. For the convenience of the court and that we may present fairly the case made by the plaintiffs, we will here set out the entire evidence upon this subject, in cross examination of this witness as it appears in the Record.

Upon cross-examination, Mr. Gilbert was inquired of and testified as follows: [Record, 92.]

Q. Did Eldridge and Company deliver any pork on the 1st of August, for McCrea?

A. Indirectly they did.

Q. Did Eldridge and Company deliver any pork on the contract that you have read here for McCrea, on the 1st of August?

A. He did, according to our rules.

Q. Answer my question?

A. No, sir; he did not.

Q. I want to ask you whether it is not true, that within a very few days after you made that contract with Eldridge upon the account of McCrea, that you cancelled that contract?

A. We offset that contract by substituting another.

Q. Did you not cancel the contract so that Eldridge was not bound to deliver you any pork on the 1st of August?

A. Yes, sir; that is, the party that was substituted, was bound to deliver.

Q. Will you be kind enough to state upon what consideration you cancelled the contract for the purchase of this thousand barrels of pork from Eldridge: what did he give you to cancel it?

A. There was Eldridge and other parties; there were 250 lots; we received a check of eighty dollars from George Eldridge.

Q. Then, as I understand you, Eldridge gave you eighty dollars and *cancelled this contract for the thousand barrels of pork?*

A. *Yes, sir.*

Q. *And you cancelled that contract accordingly?*

A. *Yes, sir.*

Q. You also purchased from Mr. Eldridge, as you have reported here, two hundred and fifty tierces of lard on or about the 19th day of May?

A. We did.

Q. Now, will you be kind enough to tell whether it is not true that *you also cancelled that contract?*

A. Yes, sir.

Q. When did you cancel that contract?

A. We offset that, June 7th.

Q. That is: June *the 7th you cancelled that contract, did you?*

A. *Yes, sir.*

Q. *Did you notify McCrea that you had cancelled those contracts?*

A. *No, sir.*

Q. *After you had cancelled that contract, he was not bound to deliver you any lard on that contract, was he?*

A. No, sir."

Q. Now, the next contract was on the 22nd of May: "Bought of George C. Eldridge & Co. five hundred tierces of lard." That is one of the contracts you put in evidence here, is it?

A. Yes, sir.

Q. Will you state whether you cancelled that contract also?

A. We did, June 7th, so far as Elridge was concerned.

Q. And you cancelled all the contracts that you made for McCrea, either on the 19th or the 22nd, did you not?

A. Yes, sir, but had them coming from other parties.

Q. Now, I would like to know what you mean by telling the court and the jury in the face and eyes of the cancelling of every contract, that these men from whom you had purchased this property for McCrea, that they delivered it on the 1st of August, and you had to pay for it, what do you mean by that?

A. On May 19th, we bought one thousand barrels of pork of George C. Elridge & Co., we offset these contracts May 24th, May 23rd, May 25th, and May 24th, and in place of that contract, stood upon our books contracts from William Kirkwood & Co., Councilman & Co., Henry Mamery & Co., C. Berry French & Co., and Schooneman & Co., it came through quite a number of persons until it finally came down to the parties with whom he had contracts, and they delivered us the stuff and the sum total we paid the parties for that stuff together with the advances we paid out theretofore, makes the exact amount of one hundred and ninety-eight thousand and ninety-five dollars. What we paid for the stuff, together with the amount we had paid out before, made the amount of money we paid out for James McCrea the same amount. We did that according to our rules on the Board of Trade.

Q. Then it is not true, is it, that any one of these persons from whom you purchased pork and lard upon account of McCrea on the 19th or 22nd of May in pursuance of those contracts, made delivery of any pork or lard to you?

A. No, sir.

Q. You have said by way of your explanation that you substituted one contract for another. Did you notify Mr. McCrea of any substitution?

A. No, sir.

Q. *You keep books of account, do you not, in regard to your purchases?*

A. *Yes, sir.*

Q. Do your books show from whom you purchased this property for McCrea?

A. Yes, sir.

Q. Do your books show who, or what contracts you substituted when you made the change you have mentioned.

A. Yes, sir.

Q. *Will you turn now to the book, and state how you made the entry upon the book of the purchases first made for McCrea on the 19th and 22nd of May. State what there is upon your book to indicate that this contract is made on account of McCrea?*

A. There are the columns: date, number, bought of, account, quantity, terms, price, date of settlement, margins, folio.

Q. *There is something here to show whose account?*

A. *Yes sir; May 19th, there is an entry: we bought one thousand barrels on account James McCrea, at $19.50.*

Q. A few days thereafter, as you have told us, you commenced selling. Now will you turn to any of the additional entries upon your books and let us see if you have his name there upon the substituted contracts?

A. No, sir.

Q. *I want to know whether you made any entry upon your purchase book, or any other book of yours, the day you gave up any of those contracts, showing what contracts took its place?*

A. *We made no mark on the books, sir.*

Q. Did you not, in answering questions about this in Chicago, say in answer to this question: "*Will you tell us who was owing McCrea any pork then?*" *didn't you answer* "*Higgins and Gilbert?*"

A. I did, sir.

Q. So, as I understand you, after you had cancelled these contracts of purchase which you made upon his account, the only person or persons in Chicago that McCrea would have the right to call upon for pork and lard was Higgins & Gilbert, was it not?

A. Yes, sir, that is the only party he ever looked to."

Q. Then Higgins & Gilbert owed him the pork after that, did they not?

A. Yes, sir.

Q. In answer to that question put to you at Chicago, did you not say, "*Certainly, Higgins & Gilbert was the house he looked to?*"

A. Yes, sir.

Q. I will ask you to turn to the rule that bears upon the subject of substitution. You refer to rule No. 26, do you not?

A. Yes, sir, section 6 of Rule 26.

Q. That is the rule bearing upon the question of substitution, as I understand you?

A. Yes, sir.

Section 6 of Rule No. 26 is copied into the bill of exceptions on page 90 of the printed record and reads as follows:

"RULE 26.

SECTION 6. In case any member of the association acting as a commission merchant, shall have made purchases or sales by order and for account of another, whether the party for whom any such purchase or sale was made shall be a member of the Board of Trade or otherwise, and it shall subsequently appear that such trades maybe offset and settled by other trades made by said commission merchant, he shall be deemed authorized to make such offset and settlement and to *substitute some person or persons for the one from or to whom he may have purchased or sold the property originally. Provided: That in case of such substitution the member or firm making the same shall be held to guaranty to his or their principal the ultimate fulfillment of all the contracts made for account of such principal* which have been so transferred and shall be held liable to such principal for all damages or loss resulting from such substitution."

The testimony shows that a considerable portion of the money claimed to have been paid out by Higgins & Gilbert upon account of the defendant, McCrea, was paid out to George W. Higgins & Company, George W. Higgins being the father of the plaintiff, Higgins; and so, upon cross-examination, (upon page 95,) the plaintiff, Gilbert, is inquired of:

"Q. You gave a check to George W. Higgins & Co. for a large amount, had you made any contracts with him for any pork or lard from George W. Higgins & Co. upon account of the plaintiff?

A. No, sir.

Q. If you made any contract with him for the purchase of any pork or lard, you made it upon some other man's order, can you tell me upon whose order?

A. He delivered us fifteen hundred barrels of pork that we had sold for his account.

Q. To whom had you sold it for his account?

A. Culver & Co., on June 27th.

Q. The 27th of June you had sold to Culver & Co. the pork which you gave him this check for?

A. Yes, sir; we had sold it on his account and on his order.

Q. *And as I understand you, it was in pursuance of that contract and not upon any contract upon McCrea's account, that you gave him that check?*

A. We paid it for the stuff that came in.

Q. Can you connect the contract of purchase with its fulfillment. As I understand you, you sold on account of George W. Higgins & Co. to Culver & Co., fifteen hundred barrels of pork?

A. Yes, sir.

Q. Now, so far as Culver & Co. was concerned, that transaction was made upon the 27th of June, and Higgins & Co. fulfilled that contract by the delivery of pork on the 1st day of August. Is that correct?

A. Yes, sir; to us.

Q. *Was it on that contract that you gave him the check that you now produce?*

A. *Yes, sir.*"

The witness then goes on to state that each and every check which he produced, as paid out upon account of James McCrea, was paid upon other contracts than upon contracts entered into upon account of McCrea. [*See Record, Pages 95 and 96.*]

In his further testimony, [*Pages 109 of the Record, forward to 112.*] Mr. Gilbert explains over again the cancellation of these contracts made upon account of McCrea.

On Page 112, in answer to the question:

Q. But you did relieve all of them from the performance of the contract of delivery in August, in the manner you have stated here?

A. Yes, sir.

Q. You have said something to me in your testimony about offsetting one contract against another. That looks to me very much as if you were making use of the contract that you held for McCrea's benefit, for your own benefit; is that true?

A. *No, sir; except to facilitate our business. Not in dollars and cents.*

Q. That is the use I believe, that any one puts other people's property to, to facilitate their own business?

A. I mean that we did not get any money for it, or anything of that kind. We did not make anything on the market.

Q. As I understand, it comes to about this : say some day in May, I suppose the 24th or 25th of May, you were bound to deliver to somebody a certain amount of lard or pork, and instead of delivering it, you would make use of the contract which you held on account of McCrea to discharge that obligation, would you not. Is that called offsetting?

A. We would offset the two contracts.

Q. One to have McCrea's, and one some other man's?

A. Yes, sir.

Q. Would not that be using it for your own benefit?

A. Merely to facilitate the business. To facilitate the handling of a great many contracts. Both parties very often get out of contracts. McCrea sold out some before it was due, to be delivered some time.

Q. So that, notwithstanding, you held the lard and pork on account of McCrea, you did not hesitate to make use of that contract in order to get out of some other one, did you?

A. Not where we could have it coming from some other party.

Q. *You just go on and make use of it as if you owned it, do you?*

A. *Yes, sir.*"

Record, Pages 113 and 114.

The witness here testified that they did their business, and conducted these transactions for the defendant, exactly in the way that the proprietor of an elevator handles and treats the grain of his different customers; that they had so much stuff coming in, and so many contracts outstanding, that they reserved no special lot or contract for any particular customer.

On Page 115.

Q. "Why did you not report to McCrea, if you had been able to use his contract in a way that would relieve him from loss on the lard transaction?

A. Because it is not customary to do so on the Board; it is never done. Offsetting the contracts did not relieve him or us from any loss.

Q. Is it not customary to inform a man that you have made use of his contract or property?

A. It is not customary to notify a man that you have offset any contract.

Q. Not that you have relieved anybody from the performance of the contracts that you made upon their account?

A. *No, sir; it is not customary under that rule.*

Q. That is the only reason you did not notify McCrea?

A. Yes, sir."

On Page 117.

"Q. Do you mean to tell me you do not know whether any of these men made delivery to your firm on the 1st of August, of any lard or pork under that particular contract?

A. *No, sir, they did not, on the first contract.*

Q. Why did you not say that in the first place?

A. I did not understand you.

Q. I suppose the reason that these men did not make delivery of pork and lard upon the 1st of August under the contracts that you made with them about the 22nd of May, was because you had either offset them or in some other form released them?

A. They were offset.

Q. You released them?

A. Offset.

Q. In offsetting a contract, you release a man, do you not, from its performance?

A. Yes, sir."

On page 130. The witness' attention is directly called to the question as to who would be responsible to McCrea for the delivery of pork and lard upon his contract after the cancellation of the contracts by the process of offsetting above explained, and beginning on *page 130* he is inquired of:

"Q. *By the 25th of May you had closed out as I understand you all the pork which you had purchased upon the account of McCrea under an order of the 19th?*

A. *Yes, those original contracts offset and others were opened.*

Q. *They are all ended in the same way—terminated in the same way?*

A. *Yes, sir.*

Q. *Will you tell me who was owing McCrea any pork then?*

A. *Higgins & Gilbert—that is, we were looked to for the fulfillment of this contract.*

Q. *Higgins & Gilbert owed him the pork then?*

A. *Certainly, Higgins & Gilbert was the house he looked to.*

Q. *Mr. Gilbert, after you had sold out the contracts which you made upon his account between the 22nd and 25th of May, there was no third person, as you understood it, that was bound to deliver to him any pork?*

A. *They were only bound to deliver to us. These parties we were buying for. We did not sell out these contracts on the days of those offsets. These sales were made for our customers. He could not have brought suit against anybody but Higgins & Gilbert.*

Q. But, as I understand, when you made contracts with the different people that you told me you made contracts with upon his account, he certainly could have brought suit against them I take it?

A. No, sir, they did not know anybody in the contract but Higgins & Gilbert. If the market declines, they call on Higgins & Gilbert. Mr. Elridge knows no one but Higgins & Gilbert, and they are the parties who put up the money, and if Elridge & Co. had failed, and the pork was twenty-five dollars a barrel, do you suppose McCrea would have asked whose pork was bought of, or anything of that kind? No, sir, but you say that he looked to us and would hold us responsible for it. If he told us to sell, we had to sell, and if he told us to buy, we had to buy, but at the same time we were principal to him in another sense, for he looked to us for the fulfillment of the contract.

Q. So, as I understand it now, instead of your having been doing anything up here as an agent for McCrea, the real truth is that McCrea was buying for you and you selling to him, is that the idea?

A. No, sir. We were his agents, and had to fill his orders, but at the same time he looked to us for the fulfilment of that contract."

Q. If you were selling directly to McCrea yourself, upon what ground would you charge him for commissions?

A. I did not say directly, we stood responsible for the fulfillment of these contracts.

Q. I wish you would tell me before-hand so that there need not be any more mistake about it: whether in the dealing between you and McCrea you commenced dealing as agents for him, is that it?

A. We commenced buying on order as an agent that is responsible for the fulfillment of the contract.

Q. For whom?

A. For James McCrea; we were responsible for the fulfillment of the contract.

Q. Now, then, when did you cease to be agents for McCrea and become a principal dealer upon your own account?

A. We did not cease; it was agent and principal from the start.

Q. And all the way through?

A. Yes, sir.

Q. And that is the relation that you sustained all the way through, is it?

A. Yes, sir; we followed his instructions when he gave them to us; but we were responsible for every thing; put up our money and every thing else."

RECORD 136.—MR. GILBERT'S ATTENTION IS HERE CALLED SPECIFICALLY TO THEIR BOOKS, AS TO WHETHER AFTER THE CANCELLATION OR AT THE TIME OF THE CANCELLATION OF THE CONTRACTS MADE UPON ACCOUNT OF McCREA THERE WAS ANY SUBSTITUTION OF OTHER SPECIFIC CONTRACTS FOR THE CONTRACTS CANCELLED; AND STATES DISTINCTLY THAT NO PARTICULAR CONTRACT WAS SUBSTITUTED.

" Q. Let me understand, what I desire to have you explain is this: whether you made any change or any entry in your books showing upon the face of your books what contracts you had substituted in behalf of

McCrea in place of those which you have mentioned?

A. *No, sir; the only way to tell that is: you can see by the dates of the offsets and then trace it down.*

Q. *But you did not assign any particular contract?*

A. *No, sir; we only looked to see that we had the amount coming in the aggregate.*

Q. *But you made no substitutions I understand, of one contract for another?*

A. *We did not make that substitution, but we knew it by looking to see if we had three thousand barrels of pork coming."*

And on page 137:

"Q. *Now, you did not mark upon any of the contracts on your book, as I understand you, a substitution or change from the contracts first made; you did not mark a change or substitution of the one for the other upon your books in behalf of McCrea?*

A. *No, sir; not each particular lot.*

Q. *Did you mark any lot at any time?*

A. *Only in the way I say, the bills would be taken off at night. No, we did not mark it.*

Q. *You never did mark any, did you?*

A. *No, sir.*

Q. *Or put anything upon your books to indicate that you held it for McCrea?*

A. *No, sir.*

Q. Now, then, let me ask you: suppose that these men from whom you purchased the pork and lard for

McCrea, deliverable during the month of August, supposing that they had been anxious to release McCrea from his obligations, how could they have done it after you had given these contracts up to some body else?

A. Those men don't know McCrea in the transaction at all, they only look to Higgins & Gilbert.

TESTIMONY OF MR. HIGGINS [Record 155.]

Mr. Higgins, in his testimony, gives substantially the same account of the transaction as Mr. Gilbert, and both of them very clearly show that after entering into the contracts in question with George C. Eldridge and others for the purchase of sundry lots of pork and lard deliverable to McCrea in August 1883, the plaintiffs used these contracts precisely as if they owned them, using them, in the language of the plaintiffs, to facilitate their own business and cancelling and releasing the contractors from the delivery of any pork and lard under such contracts.

WHAT THE FOREGOING EVIDENCE SHOWS.

It clearly appears from the testimony of the plaintiffs that at the time of receiving the several orders from McCrea to purchase pork and lard upon his account, the orders were executed and that the plaintiffs did, in pursuance of such orders, purchase from sundry parties sundry lots of pork and lard deliverable in August, and that they reported such purchases as made to McCrea. They also entered upon their books in the regular way the purchases upon McCrea's account, stating the date of purchase, the price, and *entering McCrea's name upon their book as the party upon whose account the particular purchases were made.* Up to this time the plaintiffs seemed to act fairly as the agents of McCrea, but within less than a week after making the several contracts of purchases upon his account and making entry thereof upon their own books, they of their own motion and without notice to him, cancelled the contracts so made and relieved the sellers from the performance of the several contracts so entered into without *substituting by name or otherwise any third person or persons whatever as the parties who were to perform such contracts, or in any other respect turning over to McCrea or for his account, any pork or lard contracts held by them against any other person or persons.* At the time the contracts were entered into with Elridge and others, McCrea had the right to rely upon Elridge & Co. for the performance of the contract or contracts made with that firm. He had also the right to rely upon the good faith of Higgins & Gilbert in guarding and protecting his interests in regard to the several contracts made upon his account. Higgins & Gilbert sustained to him the relation of agents, and upon his account as such agents had made for his benefit but in their own name a contract or sundry contracts with Elridge and others which McCrea, in case of failure or otherwise of Higgins & Gilbert, would have had the right to enforce against the different parties from whom he had purchased the goods.

When Higgins & Gilbert cancelled these several contracts and relieved the sellers from the performance thereof, *they did not substitute in place of the cancelled contracts any other existing contract in its stead, but upon the contrary, they became the only responsible parties to McCrea, changing their relation at once from his agent and representative to his vendor and making it at once a matter of interest with them personally to hold him to the performance of contracts if the market went against him and to its non-performance if it went in his favor.*

THE CHARGE AND THE EXCEPTIONS.

Upon this state of facts undisputed, the court (page 167) charged the jury:

"For present purposes the court instructs you that you may, for the purposes of this case, assume that the defendant did know and did consent that these plaintiffs might act under the sixth section of the 26th rule, and that such knowledge and acquiescence of his authorized the plaintiffs to cancel the first contracts and substitute others in their place; but the court instructs you that assuming plaintiffs' contention in this respect to be true and assuming that the plaintiffs themselves have told the truth in this case, there has been no valid substitution of other contracts for those that were cancelled, and that the plaintiffs cannot, therefore, for that reason upon their own testimony, recover anything in this action. If you find upon that question, the original contract to have been valid and that the defendant is excused or absolved from liability because of this attempted substitution which the court instructs you was not made in accordance with said rule, then and in that case the defendant will be entitled to recover upon his cross-action against the plaintiffs for all the money which he advanced in pursuance of these contracts."

If we are to treat the exception as properly made and as made to this charge, then the Record shows, (page 167), that the plaintiffs excepted to the charge of the court in the following particulars, to wit:

1. It allows the defendant to recover, notwithstanding his confession of record that he intended to gamble.

2. "It allows the defendant to recover in virtue of plaintiffs' innocence, by giving the defendant a verdict for what he says were gambling advances.

3. It takes from the jury the pure question of fact whether the plaintiffs substituted other contracts for those cancelled by offsets, and usurps the province of the jury by assuming to find that fact for them, and to make it a bar to plaintiffs' claim ; whereas, the jury had the right to find that fact the other way, and to bind and conclude the court by such finding;

4. It instructs the jury in effect that they may base their verdict upon either of two inconsistent positions taken by the defendant in his amended answer and counter-claim, instead of directing the jury that the defendant must elect to take one of the two positions.

5. It directs the jury with respect to a finding of fact upon which there is conflicting testimony.

6. There being no proof of any damage suffered by the defendant by reason of the acts or omissions of the plaintiffs complained of, it directs the jury that in the event that they find the transactions to be other than gambling transactions, they must render a verdict for the defendant on his counter-claim to the amount of the moneys advanced to the plaintiffs."

Assuming that these exceptions are in such form as to present the question for review in this court according to the established rules of practice, let us examine the charge.

Briefly stated, the court instructed the jury :

1. That assuming that the plaintiffs, under the rules of the Board of Trade of Chicago, had the right to offset contracts held in their name for the plaintiffs' account for their own benefit, that upon their own testimony they had not offset such contracts in accordance with the rules of the Board of Trade, and hence : as it clearly appeared that they had cancelled the contracts made upon his account, they could not recover

upon such contracts, the contracts themselves no longer being in existence. And

2. That the substitution stated and proved by them was not in accordance with the rules of the Board of Trade proved by them, and that hence: if the jury found that the contract itself was made in good faith and was not a gambling transaction, the contracts being cancelled and given up by the act of the plaintiffs, they were bound to restore to the defendant the money which he had paid to them upon the supposition that such contracts existed.

THIS INSTRUCTION OF THE COURT, WE MAINTAIN IS STRICTLY IN ACCORDANCE WITH THE LAW.

It clearly appears that whatever the plaintiffs undertook to do in Chicago upon the part of the defendant, was undertaken to be done as his agents and representatives. They entered into the contracts with Elridge and others, it is true, in their own names, but as they were commission merchants, buying and selling upon the account of others in Chicago, it was well known and understood by persons with whom they dealt, that the purchases made by them were made upon account of some principal, and that they were but agents in the transaction. *As between themselves and McCrea, they were clearly his agents, and whether they* could have been held liable personally to Elridge & Co. and other sellers, is a matter of no consequence. Confessedly, whatever purchases they made, for which they seek to hold McCrea liable in this case, they made upon his account, and as his agents and representatives. It is not denied by them, but very plainly confessed, that after making these several contracts or purchases upon his account, they made use of the contracts as if they were their own property, and cancelled and offset them for their own benefit and to facilitate their own business. *They terminated and cancelled the contracts upon which they sought to recover against McCrea in this action;* so that they were compelled to admit upon the witness stand that within a very few days after the making of the contracts in question, upon his account, they cancelled and terminated them so that from that time until this they have had no existence whatever. They occupy in court the anomalous position of undertaking to maintain an action upon sundry contracts made upon the account of the defendant, which they themselves confess have been cancelled and terminated. Ordinarily, it would be sufficient to say that the cancellation and termination frankly admitted and clearly established, ended the plaintiffs' case, and entitled the defendant to recover back his money; but it is claimed that by some mysterious power pertaining to the 26th rule of the Board of Trade of Chicago, the contracts made with Elridge and others continue to live, for the purpose of holding McCrea; although it is confessed by the plaintiffs that they are dead for any purpose of holding Elridge and others.

RULE 26.

Remembering, then, that the several contracts in question upon which the plaintiffs seek to recover, *have been cancelled in fact so that upon the 1st day of August the several vendors therein mentioned were not bound to deliver the goods therein contracted, but were wholly relieved therefrom*, let us for a moment carefully consider *Rule No. 26* and ascertain whether there is anything in that rule which allows the plaintiffs to keep the contracts in life for the purpose of holding their principal, notwithstanding they have discharged the other parties to the contracts. The rule reads as follows: [Record 90.]

"*In case any member of the association, acting as a commission merchant, shall have made purchases or sales by order and for account of another, whether the party for whom any such purchase or sale was made shall be a member of the Board of Trade or otherwise, and it shall subsequently appear that such trades may be offset and settled by other trades made by said commission merchant, he shall be deemed authorized to make such offset and settlement and to substitute some person or persons for the. one from or to whom he may have purchased or sold the property originally. Provided, that in case of such substitution, the member or firm making the same, shall be held to guaranty to his or their principal the ultimate fulfillment of all the contracts made for account of such principal which have been so transferred, and shall be held liable to such princi-*

pal for all damages or loss resulting from such substitution."

This rule seems to be very plain and as we understand it, simply means this: that in cases like the one in question, commission merchants like the plaintiffs, entering into contracts like the contracts entered into upon acconnt of the defendant, have the right, *under the circumstances mentioned in the rule*, to cancel the contracts entered into upon account of their principal, provided at the same time, *they substitute other contracts held by them or turn them over to their principal.* And provided further, that when any such substitution or change is made that they shall themselves stand as guarantors for the performance of the substituted contracts. As we understand it, the plaintiffs in entering into contracts of the character made for McCrea, although made in their own name, would not be liable to McCrea so long as they acted in good faith, upon account of the failure of Elridge and others to make delivery of the property according to the terms of the contract. In other words: in making such contracts in the first instance, they are not guarantors of the solvency of the parties with whom they deal, nor do they guarantee that such persons will perform their contracts entered into; but in case they cancel the contracts originally made for their principals, and substitute other contracts in their stead, the rule provides that in such contingency the agents or commission merchants shall themselves be answerable to their principal, not as principals or contractors, but that they shall be held as guarantors upon the substituted contracts. The rule contemplates this, and nothing more. As we understand it, the rule means that in the first instance, a party dealing through a commission merchant on the Board of Trade of Chicago, shall be entitled to the services of the commission merchant made upon his account in good faith and the commission merchant discharging his duty in good faith, clearly would not be liable for the non-performance of contracts or the failures of parties from whom he had purchased or to whom he had sold upon account of his principal. But in case of the release of the first principal, the vendors or purchasers in the first instance, by the commission merchant *and the substitution of some other principal*, the rule requires that the commission merchant shall himself become answerable to his principal, *not as a principal, not to take the place of the vendor or purchaser*, but that he shall be answerable as a guarantor upon any contract or contracts against a third person, which he turns over by way of substitution for any contract or contracts cancelled by him.

In order then for a commission merchant to make use of existing contracts belonging to his principals, in his own business, at the time he cancels one contract he must *actually substitute some other contract* held by him or procured by him in place of the one cancelled. And clearly, the contract substituted must be the equivalent of the contract cancelled. He has no right under this rule to cancel and surrender one contract without at the same time providing his principal with another contract in its stead; and even then, having taken such liberty with the contract of his principal, the rule further provides: that from the time of the substitution, on to the full performance of the contract, he must stand as a guarantor upon the part of the new and substituted principal touching the performance of the substituted contract and must stand answerable for all damages which may result to a principal in consequence of the substitution.

If we are correct in our understanding of this rule—and certainly, it does not seem to be of doubtful meaning—then we have simply to consider whether there was a substitution made by the plaintiffs within the rule. The court instructed the jury that there was no substitution within the rule. There is no contention about what the plaintiffs did. It is not denied but it *is expressly admitted that they actually cancelled the contracts entered into upon account of the defendant.*

It is not pretended that at the time of such cancellation or at any time that they set aside and substituted any other contract or contracts held by them in place of the cancelled contracts. They did not set apart for the defendant any other principal in place of Elridge & Co. and others whom they released. The most that they claim for themselves in their own testimony is that they had coming from some one or from a great many people as much pork and lard as they had purchased upon account of the plaintiff and others.

THE FOLLOWING EVIDENCE SHOWS CONCLUSIVELY THAT NO SUBSTITUTION WAS MADE. [RECORD, 136.]

"Q. What I desire to have you explain, is this: whether you made any charge or any entry in your books showing upon the face of your books what contracts you had substituted in behalf of McCrea in place of those which you have mentioned?

A. *No, sir; the only way to tell that is you can see by the dates of the offsets and then retrace it down.*

Q. *But you had not assigned any particular contract?*

A. *No, sir; we only looked to see that we had the amount coming in the aggregate.*"

In case of their own failure, it is very clear upon their own statement that these contracts held by them, would have gone into their general estate and would have been subject to equal distribution among their several creditors.

In the first instance, they entered into contracts for the account of McCrea, and which, in case of their failure, McCrea might reasonably expect would have been turned over to him. They were his property, but after the cancellation of those contracts, Higgins & Gilbert, and they alone, in the language of Mr. Gilbert, became not only according to the rule, guarantors of the performance of substituted contracts but *they became the only contractors, without having entered into that relation with their principal.*

As we have seen, (*on page 131,*) in the Record, after having stated that all of these contracts made for McCrea were ended and terminated in the same way, to wit: by cancellation, Mr. Gilbert is inquired of:

"Q. *Will you tell me who was owing McCrea any pork then?*"

His answer: "*Higgins & Gilbert, that is, we were looked to for the fulfillment of this contract.*"

Q. Higgins & Gilbert owed him the pork, then?

A. Certainly.. Higgins & Gilbert was the house he looked to."

There is no pretense upon the part of the plaintiffs that they substituted any other contract in place of the cancelled contracts. What they did do, *was to make themselves principals,* as they claim, and to deprive their principal of the security which would have been afforded to him by turning over to his account contracts held by them with third parties. They put themselves in the position of *principals* for the performance of *contracts which they had made upon the account of Mr. McCrea as their principal.* The court told the jury that such a change was not in accordance with Rule No. 26 of the Board of Trade.

Under this rule of the Board of Trade, the commission merchant is bound at all times to occupy the *relation of agent* to his principal. He is not allowed to change that relation. He may substitute one contract made for his principal for another held by him, and turn it over to his principal, but under the rule he must still continue to act as agent for his principal, with this difference only: that in case of substitution, he becomes liable to his principal for all damages resulting from the change from the substitution, and becomes a guarantor that the new party put in place of the old will perform the substituted contract with his principal. But in all of this, there is nothing which allows the commission merchant to deprive his principal of a third party in the contract and allows the commission merchant without any substitution *except creating an obligation upon himself*, to cancel the contracts of his principal, and then, if it turns out to be for his benefit, to enforce those contracts against the principal the same as if they had never been cancelled. If the ordinary rules governing transactions of this kind, that when contracts are cancelled they are no longer binding, is to be departed from by virtue of Rule 26 of the Board of Trade of Chicago, the defendant in this case and all others certainly should have the right to insist that the substitution or change provided for by this rule shall be performed strictly in accordance with the rule itself.

We are unable to see how any just complaint can be made by the plaintiffs of the instruction given to the jury in this regard. It was admitted and claimed by the plaintiffs:

1. That they had purchased upon account of the defendant, the pork and lard deliverable in August, described in the complaint.

2. That after entering into these several contracts with Elridge & Co. and others, they had cancelled and terminated those several contracts in their own interest and for their own benefit.

3. It was clearly testified to and admitted by each of the plaintiffs that at the time of the cancellation of these contracts they had not, nor had they at any other time by name or by any other designation or in any other manner substituted any contract or contracts in place or instead of the contracts cancelled; but upon the contrary, they distinctly testified that from the time of such cancellation onward, *they were themselves the only parties responsible to McCrea for the delivery of the pork and lard which they had purchased upon his account*; and August 1st, they received not on contracts made for McCrea but from themselves pork and lard for which they *then* charge McCrea, whereby it is claimed he became indebted to them. Without his consent they had become principals, whereas he had employed them as agents.

Upon these facts, wholly undisputed, upon its being shown beyond all question, by the admissions of the plaintiffs that they had substituted nothing in place of the cancelled contracts, the court instructed the jury as we contend properly: that having cancelled the contracts without the substitution provided by Rule 26, the plaintiffs were not in a position to recover upon these contracts as existing contracts against McCrea, and that upon the contrary having terminated the contracts made in his behalf and upon which he had paid them various sums of money that they were bound to return to him the money paid. We are unable to see in all this any ground of complaint upon the part of the plaintiffs.

We do not wish to be understood as conceding in this case, that it is competent for the Board of Trade of Chicago, or for any other organization, to make any rule or regulation by which a commission merchant who makes a contract for another like the one in question, is authorized after making such contract upon account of his principal, to make use of it for his own benefit and then in the contingency claimed in this case, to maintain an action upon such contract the same as if it had never been cancelled. If the question were before the court, we should certainly maintain that when a contract like the one in question entered into upon behalf of another, has been cancelled and terminated, that such cancellation and termination puts an end to the contract for every purpose, and that no action can be maintained upon it, and that all money paid over to the commission merchant under such circumstances before or after he has cancelled the contract, so held for his principal, must be returned to the principal, but as this question is not necessarily before the court in this case, and as it is very clear that the cancellation here made was not in accordance with the rules of the Board of Trade, we forebear the further discussion of this point.

THE 26TH RULE OF THE BOARD OF TRADE WAS THE ONLY AUTHORITY SHOWN OR CLAIMED BY THE PLAINTIFFS FOR THE SUBSTITUTION OF CONTRACTS.

IN THE SO-CALLED "STATEMENT OF FACT"

in the brief of plaintiffs, we find, (pages 11 and 12), the statement that by the custom of the Board of Trade:

"Prior to the delivery day the oldest outstanding purchase stands as substituted for the first purchaser."

And again, (page 19:)

"The witness then explained in detail the rule, that the oldest contract open when a prior contract has been offset and cancelled, stands as the one substituted for the one discharged."

If there had been any such testimony as this before the jury, it could not have changed the result, because this kind of substitution, if such it can be called, does not in letter or in spirit comply with the 26th rule.

There was, however, no such testimony, and we are not favored by the learned gentlemen with a reference to that portion of the record which he apparently claims contains such evidence. The only custom, as distinguished from a printed rule in any way referred to by the plaintiffs upon the trial, is contained in the following evidence:

RECORD 97.

Q. "Suppose three or four times as many trades were open as would have been required to fill that thousand barrels from Elridge, how could you tell which belonged to him and which to the other parties?

A. The very first that were delivered to us would belong to the oldest customers we had.

Q. You mean to say: the oldest customers in point of time, take the first property that comes in to you.

A. The first property that came into us we would reserve for the oldest customer. Just as it came in we would reserve it for our oldest customer.

The court. Q. That, of course, you could not decide until the property was delivered?

A. No, sir, not finally."

(*See also record 164-5.*)

The foregoing is the only evidence in which any reference whatever is made to any rule or custom or usage except Rule number 26, which we have before discussed.

Unless this rule gave the plaintiffs authority to change their relations to the defendant and become principals instead of agents, no such authority was shown upon the trial.

THE PLAINTIFFS HAVING TERMINATED THE CONTRACTS MADE UPON THE ACCOUNT OF THE DEFENDANT, HE WAS ENTITLED TO A JUDGMENT FOR THE MONEY HE HAD ADVANCED TO THE PLAINTIFFS.

The consideration upon which the defendant paid to the plaintiffs the various sums of money set forth in his answer was that the plaintiffs having at his request and as his agents, purchased contracts for property for him, he was bound to and did place them in funds sufficient in amount to meet the requirements of the contract of purchase. Without the knowledge or consent of the defendant, the plaintiffs terminated all of these contracts.

All of the contracts having been cancelled, the plaintiffs were left with about twenty thousand dollars of the defendant's money in their possession.

By the plaintiffs' own act they had made it impossible to apply this money as they had been directed to do by the defendant. The plaintiffs having failed to apply the money as directed by their principal and thus violated their contract of agency and rendered its performance impossible, were legally liable to the defendant for the money which he had so paid to them, and no error was committed by the court in so charging the jury.

THE "PROVINCE" OF THE JURY WAS NOT "INVADED."

The burden of his complaint, so far as we understand the brief of the learned counsel for the plaintiff in error, is that the court in some way invaded the province of the jury and decided a question of fact which ought properly to have been submitted for the verdict of the jury.

In reply to this point, it is entirely sufficient to say that the facts upon the legal effect of which the court instructed the jury, were all admitted. The testimony was entirely from the lips of the plaintiffs themselves, and upon such state of the evidence it was entirely proper that the court should instruct the jury upon the supposition that all which the plaintiffs stated was true, that their verdict should be either for or against the claim made by them.

This rule has been so long settled in this court that we will content ourselves with stating it, as it is found reported in quite a recent case, namely:

Randall vs. B. & O. Ry. Co., 109 U. S., 482. "It is the settled law of this court that when the evidence given at the trial, with all inferences which the jury could justifiably draw from it, is insufficient to support a verdict for the plaintiff, so that such a verdict, if returned, must be set aside, the court is not bound to submit the case to the jury, but may direct a verdict for the defendant. See also Pleasant vs. Faut, 22 Wall, 116. Herbert vs. Butler, 97 U. S., 319. Benedict vs. Burton, 101, U. S., 16. Briggs vs. Huston, 104 U. S., 583.

Upon the evidence given in this case, had a verdict for the plaintiff been rendered, it must immediately have been set aside by the court as entirely in conflict with their own admissions and confessions upon the stand ; and such being the state of the proof, it was not error for the court to instruct the jury that the plaintiffs could not recover.

In the elaborate brief which has been furnished by the plaintiff in error, among various things therein stated which have no proper application to any question which is before the court, we select for comment one or two of the propositions as being perhaps germain to the case.

It is claimed [plaintiffs' brief, 32] that

"THE COUNTER-CLAIM ON WHICH THE COURT COMPELLED A VERDICT FOR THE DEFENDANT, WAS WHOLLY BARRED."

The only reason given in support of this proposition, by the learned gentlemen, is the quotation of the Latin maxim *commodum ex injuria sua non habere debet.*

While we are by no means disposed to quarrel with the principle of law contained in this time-honored maxim, we are at great loss to understand what pertinency it has to any question now before this court. As we understand the contention made, it is claimed that because the defendant in his answer stated that so far as he was concerned the transactions upon the Chicago Board of Trade were considered as option contracts to be closed and settled by a payment of differences, and therefore in the eye of the law gambling contracts, that therefore he cannot recover upon his counterclaim against the plaintiffs, although the plaintiffs have procured money from him upon the representation that they held actual bona fide contracts for his benefit, when in fact they had disposed of and converted the same to their own use. It is sufficient to say: that the question as to whether or not this was a gambling transaction, was one of the questions which was submitted to the jury under fair instructions by the court, to which no exceptions were taken by either party. The jury were *expressly instructed that in case they found the transactions between the plaintiffs and the defendant to have been gambling transactions, neither the plaintiffs nor the defendant could recover in the action.*

This question having been fairly submitted to the jury, they determined that the transactions were not gambling transactions, but that the plaintiffs and the defendant were engaged in actual bona-fide transactions in pork and lard upon the Board of Trade; and notwithstanding the fact that the defendant tendered the issue that the contract was a gambling contract, the jury having found against him upon the same, the rights of the parties must be determined upon the supposition that the contracts were actual bona-fide contracts, and the question of what the rights of the parties would have been in case the transactions were gambling transactions, is a question not now before this court, and its discussion can have no appropriate place in this brief.

Again: we find on *Page 35* of plaintiffs' brief the following proposition:

"THE DEFENSE OF THIS CHANGE BY SUBSTITUTION, IS UNTRUE IN POINT OF FACT, AND UTTERLY IMMATERIAL IN POINT OF LAW."

And following this is the rather remarkable statement, that—

"The plaintiffs show an exact and literal compliance with the established usage of the trade in the market where the business was to be conducted."

The only custom and rule of the Board of Trade which was in evidence before the jury and upon which the plaintiffs relied as giving them authority to deal for the defendant in the manner in which they did, was *the sixth section of the 26th rule*, upon which we have before commented; and as we have before shown, it is very clear that the plaintiffs did not either strictly, or in spirit, comply with the provisions of this rule.

"THE GENERAL DOCTRINES OF USAGE AND CUSTOM APPLICABLE TO THE CASE."

We find the above heading in plaintiffs' brief, [*Page 48*] and under it, a very learned disquisition on the law of usage and custom. There is no contention in the case at bar to which any of this learning is applicable. The court expressly instructed the jury upon the assumption that: "the defendant did know and did consent that these plaintiffs might act under the sixth section of the 26th rule, and that such knowledge and acquiescence of his, authorized the plaintiffs to cancel the first contracts and substitute others in their place." [Record, 166.]

The question before the court was not as to whether the defendant was bound by a certain usage and custom of the Chicago Board of Trade, but whether the plaintiffs had themselves complied with the rule of the Board of Trade which they introduced in evidence and upon which they relied as authorizing their actions in the premises.

"APPENDIX TO PLAINTIFFS' BRIEF."

"*The learned and comprehensive review of the present and kindred cases,*" appearing as an appendix to the plaintiffs' brief, deals for the most part with questions altogether foreign to the present contention.

So far as this "Review" discusses the question of whether one who deals in a particular market is presumed to intend that his business shall be done in accordance with the particular customs of that market, and to what is said upon this subject in the brief, it is sufficient answer to say that in the case at bar the plaintiffs were by the express instructions of the court, given the full benefit of the rule upon this subject for which they contend.

"THE EXCHANGE CLEARING HOUSE."

Nothing contained in the "Appendix" as to the system of a clearing-house has any bearing on the present contention and the system is by no means as simply and clearly explained as in the opinion of this court, delivered by Justice Matthews in Irwin vs. Williar, 110 U. S., 499.

THE RULINGS OF THE CIRCUIT COURT DID NOT CONFLICT, BUT WERE IN STRICT ACCORDANCE WITH THE OPINION OF THIS COURT IN IRWIN VS. WILLIAR, 110 U. S., 499, SO FAR AS THE QUESTIONS PRESENTED WERE THE SAME.

In Irwin vs. Williar, 110 U. S., 499, this court, among other things there decided, held as follows:

"A custom among brokers in the settlement of differences which works a substantial and material change in the plaintiffs' rights or obligations, is not binding upon the principal without his assent, and that assent can be implied only from knowledge of the custom which it is claimed authorizes it."

In this case the proof showed that by the custom of the Board in Baltimore, brokers so dealt with their principal contracts as to completely change their own relations to the transaction, and to release the obligation of the person from whom their principal had purchased and themselves become vendors.

Although this custom was general in Baltimore, this court decided that it did not bind the principal without his consent. The question in Irwin vs. Williar was whether the principal was bound by a particular custom unknown to him but shown to exist among brokers in the market where the transaction in question was conducted. In the case at bar the question was this—the rule of the Board of Trade being admitted and defendants consent to be bound by it assumed—did the plaintiffs comply with the rule? By their own admission the plaintiffs did not comply with the rule of the Board, but attempted to "*substitute*" their principals' contract in a way very similar to that shown to have been done in Irwin vs. Williar and this court there decided that such a "substitution" did not bind the principal unless his consent was shown. In the case at bar it is not claimed that defendant had any knowledge of or consented to be bound by any rule in regard to substitution, except "Rule twenty-six." Rule twenty-six was not complied with but on the contrary as in Irwin vs. Williar, the brokers undertook to release the original contracts and became principals to the defendant. The Circuit Court held that such action changing as it did the substantial rights of the parties did not bind the defendant and in so doing followed the decision in Irwin vs. Williar.

We submit that there is no error in the Record, and that the judgment should be affirmed.

Respectfully submitted,

STEVENSON BURKE AND
WILLIAM B. SANDERS,
Counsel for Defendant in Error.

Supreme Court of the United States,

OCTOBER TERM, 1885.

NO. 1193.

EDWARD M. HIGGINS AND
FRED F. GILBERT,
VS.
JAMES McCREA.

In Error to Circuit Court,
Northern District
of Ohio.

BRIEF AND ARGUMENT IN REPLY FOR PLAINTIFFS IN ERROR.

STATEMENT OF THE CASE.

The statement of the case set forth in the brief filed for the defendant in error is in the main correct, but in some respects might be misleading. It is true, as stated in such brief, that the plaintiffs in error commenced an action in the Circuit Court of the United States in August, 1883, against the defendant, James McCrea, to recover about thirty thousand dollars claimed to be due to them. The pleadings in the case are of course set forth in full in the record. The allegations of the petition which are controverted by the answer of the defendant, (page 3 of the record,) are: that the defendant had full knowledge of the existence of the corporation of which the plaintiffs were members, and was familiar with the rules and by-laws of the same, and of the obligations of plaintiffs as such members, and that having such knowledge, on the 19th day of May, A. D. 1883, he requested and directed plaintiffs to make a contract in his behalf and for his account for the purchase of a certain number of barrels of mess pork and of tierces of lard, at a price named, the same to be delivered by the vendor at any time in the month of August, 1883, that such vendor might choose, at which time payment for the same should be made; that in accordance with such request and direction, as brokers and agents for said defendant, plaintiffs made such contract of purchase for said defendant and upon his account, and expended money sent by defendant in obtaining valid contracts; that on the first day of August, 1883, in execution of said contracts and in accordance with the conditions and terms thereof, the amounts of pork and lard mentioned therein were tendered to the plaintiffs, and in accordance with the conditions of their agency such pork and lard was received and paid for by the plaintiffs at the agreed price, and certain other expenditures made by them in behalf of the defendant in error for inspection charges; that the reception of such pork and lard by the plaintiffs, and the payment therefor, and also the payment of the inspection charges, was compulsory upon the plaintiffs under the terms of their contract of agency with the defendant in error and by the rules and bylaws and regulations of the Board of Trade, of which they were members; that after notifying the defendant in error of such expenditure of money on his account and that he was so indebted to them for their advances, and that unless such advances were paid, the property so received would be sold for his account and a charge made to him for any loss that might occur, such property was sold in accordance with law and the rules of said Board of Trade, and the proceeds applied in discharge of his indebtedness to the plaintiffs.

The petition then sets forth the facts of such sale and the amount realized therefrom. A credit is then allowed to the defendant in error for advances made by him on account of this contract, and a balance struck, in the amount of which it is alleged the defendant in error is indebted to the plaintiffs. There follows then, beginning with page 4 of the record, a second cause of action, containing an account of another transaction later in date but similar in all respects to the one described in the first cause of action. The third cause of action, which appears on the fifth page of the record, sets forth a claim for commissions, the right to the collection of which is based upon the allegations contained in the two previous causes of action, and the statement that by the contract between plaintiffs and defendant a certain percentage was due to them for *making the purchases* referred to, and that such purchases were actually made.

The first answer of the defendant, which appears on page 13 of the record, has appended to it certain interrogatories, the answers to which appear on page 25 of the record. Such answers relate in the first instance to transactions other than those involved in this litigation, but, beginning on page 50 of the record and extending to page 74, are full and complete answers to such interrogatories attached to the defendant's answer as relate to the particular transaction complained of, which answers show the fact of the various purchases of pork and lard made by the plaintiffs in compliance with the instructions and requests of the defendant.

The final defense made by the defendant appears in his amended answer beginning on page 80 of the record. It first describes the transactions occurring between the plaintiffs and the defendant as gambling transactions, and afterwards alleges at the bottom of page 81 of the record and continuing on to page 82, "*and whether or not they made any contract or contracts with other persons in regard to such transaction this defendant has no other information than such as he has derived from the plaintiffs themselves; and upon such information he states the fact to be that the plaintiffs did on or about the 19th of May, 1883, enter into contracts in their own name, but as they now claim upon account of this defendant with the following named persons and firms.*"

Then follow the names of various persons and firms which correspond to the statements made in the answers of the plaintiffs to the interrogatories filed with defendant's original answer. There then follow on the same page statements to the effect "that after the making of said contracts it became and was the duty of said plaintiffs as the agents of this defendant to hold said contracts for his benefit and to entirely refrain from using said contracts for their own advantage or in any manner disposing of the same without the consent of this defendant." There then follow allegations setting forth that without notice to the defendant and without his consent or knowledge the plaintiffs did sell and dispose of said contracts and convert the proceeds thereof to their own use and wholly and entirely release "*the parties with whom they had made said contracts from the obligations thereof. And defendant says that at no time after the 16th day of June, 1883, did the said plaintiffs hold any contracts whatever for the account of this defendant for pork and lard deliverable in August, or at any other time, but that long prior thereto as above stated, the plaintiffs had wholly released said contracts and converted the same to their own use as aforesaid.*"

It is then alleged that although the plaintiffs had so misbehaved as agents by selling and disposing of said contracts, they continued to falsely report to the defendant that they were holding and carrying said contracts for his benefit, and that upon their request and requirements the defendant from time to time paid into their hands large sums of money, and that afterwards the defendant entirely repudiated all contracts made in his behalf by the plaintiffs and refused "*longer to participate in said gambling transactions.*"

The answer then denies that the pork and lard in the petition was paid for by the plaintiffs or that anything was paid out for his account or that any pork was actually delivered to said plaintiffs on August 1st or any other date upon the account of the defendant.

On page 83 of the record the counter claim set forth in this amended answer appears. It adopts all the allegations contained in the answer, and refers to the transactions giving rise to this controversy "as said gambling transactions."

It sets forth also the amounts and dates of payments of money by the defendant to plaintiffs, and then complains that the defendant was damaged by reason of the fact that the contracts entered into by the plaintiffs at his instance and request were converted to their own use, and that the persons with whom such original contracts were made were released from the same by the plaintiffs; and that the plaintiffs did not carry and hold said contracts for the benefit of the defendant, as they were bound to do as his agents, and that payments were made to the plaintiffs by the defendant after such releases were made. In such counter-claim the defendant further says that the said transactions were had in the City of Chicago, in the State of Illinois, and that by reason of certain statutes of Illinois they were illegal and void and treated as gaming and gambling contracts, and that under the provisions of such statutes the defendant has a right to recover from the plaintiffs all the money advanced by him and lost by the defendant to said plaintiffs in the gambling transactions described. To such amended answer a reply was filed.

Upon the issues thus made the case came on for trial upon the evidence adduced by the plaintiffs and the defendant, and the answers of plaintiffs to the interrogatories appended to the answer of the defendant as appears by the bill of exceptions, which begins on page 90 of the record.

Upon page 8 of the defendant's brief under the heading "The Issues" it is stated that the issue between the parties was whether the plaintiffs had made upon the account of the defendant any valid purchases of pork and lard, and whether such contracts and trades had been kept in life so that the defendant was bound to receive and pay for the pork and lard on the 1st of August, 1883, and whether the plaintiffs acting as his agents but doing the business in their own names did receive any pay for upon his account any pork and lard whatever upon the contract set forth in the petition, and under which they allege they received pork and lard for the account of the defendant

We beg to suggest in this connection that this is not quite a fair statement of the issues as disclosed by the pleadings There was one distinct issue made upon the question as to whether or not the transactions giving rise to the controversy between the parties were gambling transactions; another as to whether or not the plaintiffs had complied with the terms of their contract of agency with the defendant by conducting the business in accordance with the rules and by-laws of the Chicago Board of Trade; and in connection with this latter issue to what extent they had departed from their obligations and duties as agents of the defendant; another, as shown by the counter-claim, as to whether or not the conduct of the plaintiffs was in vioalation of the statutes of the State of Illinois; and further, possibly, as to the amount of damages suffered by the defendant in error by reason of the misconduct of the plaintiffs.

In so far as these issues related to the question as to whether or not these transactions were gambling transactions and in violation of law, it plainly appears, that the jury found in the negative. The only issue then remaining is with respect to the question of the alleged misconduct of the plaintiffs in releasing the contracts made by them in behalf of the defendant and the consequent damage to him.

THE BILL OF EXCEPTIONS.

Beginning on page 9 of defendant's brief, there are suggestions urged with respect to defects that are claimed to exist in the bill of exceptions. It is there stated that the bill does not present the questions sought to be made by the first assignment of error, and the first reason given for such position is that the bill does not purport to give all the evidence. We can well see that this might be a proper position to be taken in courts where a review of the entire evidence is countenanced or permitted in proceedings in error, and where the error assigned is the overruling of a motion for a new trial, the ground of such motion being that the verdict was against the weight of evidence; but where it is claimed as error, as in this case, that the court by the part of the charge excepted to, took from the jury the opportunity of considering *any evidence* which related or applied to an issue presented, we submit that it not only is not necessary, but highly improper to burden the record with the recital of other testimony than that relating to such issue. As clearly appears in the brief of counsel for defendant in error, as well as by examination of the cases therein cited in support of the position taken, reference is only made to rulings where the reviewing court was called upon to decide whether the court below should have set aside the verdict of a jury on motion filed, the ground of which was that their verdict was *not supported by the evidence.*

Certainly, in this case, all the testimony relating to the question as to whether or not the transactions between the plaintiffs and defendant were gambling transactions, could in no way assist the court in determining whether the Circuit Court erred in not allow-ing the jury to consider the evidence set forth in the bill relating to the compliance or non-compliance of the plaintiffs with the rules and customs of the Chicago Board of Trade relating to substitutions.

On page 15 of defendant's brief it is stated: "the court charged the jury that the evidence did not prove a valid substitution." This statement is incorrect. By referring to page 167 of the record, it will appear that the language used by the court was as follows:

"But the court instructs you, that assuming plaintiffs' contention in this regard to be true, and assuming that the plaintiffs themselves have told the truth in this case, there has been no valid substitution of other contracts for those that were cancelled, and that the plaintiffs therefore for that reason cannot recover anything in this action." And further: "If you find upon that question the original contract to have been valid, and that the defendant is excused or absolved from liability because of this attempted substitution, *which the court instructs you was not made in accordance with said rule*, then, and in that case, the defendant will be entitled to recover upon his cross action against the plaintiffs for all the money he advanced in pursuance of these contracts."

It plainly appears from the context that in the language "If you find upon that question the original contract to have been valid" the court referred to the question as to whether or not the transactions were gambling transactions, and what followed in the part of the charge quoted with respect to *attempted substitution* certainly cannot be construed as saying to the jury, as stated by counsel for defendant, "the court charged the jury that the evidence did not prove a valid substitution." The bill of exceptions certainly shows the *testimony of the plaintiffs*, and the record shows in full their answers to the interrogatories filed by the defendant.

We submit, therefore, that the position assumed by defendant's counsel in this regard is not tenable, because, first, it appears that all the evidence relating to to the question withdrawn from the jury is set out in the bill of exception ; second, that even if this were not the case, it appearing from the bill that *some evidence* was not permitted to be considered by the jury, enough is shown to support the assignment of error ; third, the error complained of is not that the Court did not properly weigh the evidence, but that the jury were not permitted to weigh it.

The bill rather merits praise than blame for the omission of matter unnecessary to the consideration of the questions raised.

SUFFICIENCY OF EXCEPTION TO CHARGE.

The next point suggested by defendant's counsel, on page 15 of brief, is, "that the exceptions to the charge are insufficient."

In answer we say that on page 166 and 167 of the record it appears that the court, after refusing to charge the jury with respect to the question whether there had been a compliance with the rules of the Chicago Board of Trade regulating offsets and the substitution of parties, as requested by the defendant, proceeded to explain to the jury what would and what would not constitute a gambling contract. There is then set forth in the language of the court the remaining parts of the charge to which exception was taken; then follows the statement "and the plaintiffs then and there excepted to the charge of the court in the following particulars, to-wit:" etc. The plain import of the language which preceeds the quotations from the charge, and upon which defendant's counsel rely, "and then said, among other things not excepted to," taken in connection with the statement which just precedes it, that no exceptions were taken to the charge so far as it related to the subject of gambling, is that there were things said by the court subsequently, to which no exception was taken,and which are omitted from the bill, and that only those parts quoted to which exception was taken, were inserted. The language referred to is simply in effect as follows: "and then said among other other things not necessary to be put in the record and therefore omitted," etc., etc.

By reading the exceptions themselves it plainly appears that they are directed and refer to the parts of the charge quoted.

It is then urged in behalf of defendant [brief, page

18 and 19] that the exceptions are not sufficiently specific.

In answer to this we have to again quote from the record, page 167, that part which introduces the specific exceptions.

* * * * * *

"And the plaintiffs then and there excepted to the charge of the court in the following particulars, to-wit." Preceding this language in the record is set out the part of the charge to which exception is taken. As appears by the statement just previous to the part of the charge quoted, one part referring to gambling transactions is left out; there being only two issues in the case, that as to whether the contracts were gambling contracts, and the other as to substitution, the natural division of the charge is as set forth in the record. It also appears in the statement preceding the parts of the charge quoted that other parts of the charge were not excepted to. It follows then that it is found by the Judge who signs the bill of exceptions that the exceptions taken and set forth in the record applied only to the part of the charge referred to, and that that part is set out in *totidem verbis* It nowhere appears that exception was taken to the charge as a whole.

We submit that in accordance with the rule announced in Lincoln vs. Claflen, 7 Wallace, page 38, the record shows that a specific portion of the charge was pointed out and exceptions made thereto, and that there has been in this case no violation of the rules and principles announced in the other cases cited by counsel.

In McNitt vs. Turner, 16 Wallace, page 363, it is only decided that a general exception to the whole charge of the court is insufficient. And so in Beaver vs. Taylor et al. 93 U. S. Reports, page 46.

In Beckwith vs. Bean, 98 U. S. Reports, page 284, it is said, as appears in the part of the opinion quoted by defendant's counsel on page 22 of their brief: "we cannot tell *what portion of the elaborate charge* concerning the evidence relied upon for justification under these acts was intended to be covered by this general exception."

In the case at bar *the portion* of the charge excepted to and that only is set out and brought to the attention of this court. The defendant in error certainly cannot complain because various reasons for such exception are assigned and proved. Assigning various reasons is certainly a different thing from vaguely and indefinitely referring to so much of a whole charge as a plaintiff in error may, without identifying generally, describe by characteristics which he himself attributes, thereby leaving the trial court without the means of correcting the error or oversight at the time of its commission, and the reviewing court without knowledge of what is complained of.

PREJUDICAL ERROR.

The next position taken by the defendant in error, as appears on page 23 of the brief, is stated in this language: "there is no error in the record to the prejudice of the plaintiff in error."

It is then assumed for the time being that the questions sought to be made by the plaintiffs in error are properly before the court. There is then quoted at length the rule of the Chicago Board of Trade with respect to offsets and settlements referred to in the charge of the court. After this quotation there appears the following statement: [page 25 defendants brief] " the further evidence in the case consists chiefly of evidence given by the plaintiffs themselves. * *

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and we propose as briefly as possible to call the attention of the court to all the evidence given by the plaintiffs which has any proper bearing upon the question now under discussion."

We beg to suggest in passing, that this is an admission on the part of counsel that all the testimony applicable to the errors assigned appear in the record, and that therefore their contention that the bill of exceptions is defective in that regard, should not be urged.

So much of the testimony given by the plaintiffs in the case, as is deemed proper, is then set forth. On page 42, following this recital or description of such testimony, is a statement of what such evidence shows. This statement contains certain admissions of great importance to the plaintiffs in error and much simplifies the discussion of the question referred to above, as to whether or not the record shows any error prejudicial to the plaintiffs.

First, it is admitted that the testimony shows clearly that the orders sent by McCrea to the plaintiffs was executed by them by purchasing the pork and lard, as directed, from sundry parties, and reporting such purchases to McCrea.

Second, that they, the plaintiffs, entered upon their books in the regular way these purchases upon McCrea's account, stating the date of purchase, the price, and McCrea's name as the party upon whose account the particular purchases were made; and further, "that up to this time the plaintiffs seemed to act fairly as the agents of McCrea."

In this connection it is proper to refer to the amended answer of defendant in error at the top of page 82 of the record, where the dates of the purchases referred to are admitted to have been on the 19th and 22nd of May, 1883, respectively. These dates are further shown by the telegrams on page 98 of the record. A week then elapsed before it is claimed that Higgins & Gilbert did anything not strictly in accordance with their duties as agents of McCrea. Turning then to the statement on page 7 of the defendant's brief, and also to the counter-claim shown on page 83 of the record, we find that McCrea had given to the plaintiffs the sum of seven thousand, eight hundred and seventy-five dollars to be used in these purchases before the time when it is claimed that any breach of their contract of agency occurred by the alleged cancellations. It appears from the evidence quoted on page 28 of defendant's brief, that some of the contracts were not cancelled until as late as June 7th, 1883. It therefore is admitted that Higgins & Gilbert paid out the sum of seven thousand, eight hundred and seventy-five dollars to the parties with whom they made contracts for McCrea. *It nowhere appears in the pleadings, in the testimony, nor is it anywhere claimed by counsel for defendant in error that these plaintiffs in error ever received any of this money back.* It is not claimed or shown that they converted this money to their own use in any way, as by going to Eldridge & Co., and saying "return to us the money advanced and we will cancel the contract."

Therefore we submit, that if nothing else could be said with respect to the injury done to the plaintiffs by the part of the charge of the court excepted to, this certainly could be said, that, in instructing the jury that in the event they found the transactions between plaintiffs and defendants other than gambling transactions they must return a verdict for the defendant in the amount of the sum of *all* his advances, the court plainly erred.

In the counter-claim it is only asked that the defendant recover, otherwise than under the gambling statute, the moneys advanced by him after the contracts were cancelled, and which was obtained from him by the plaintiffs, as he therein claims, by their false and fraudulent representations to the effect that the contracts had not been cancelled, but remained still in existence. And this taken in connection with the facts, that it nowhere appears in the record or is anwhere claimed in the brief of counsel, that McCrea was in any way *damaged* by the so-called cancellation, but on the contrary, if affected in any way, was benefitted by such cancellation, leads us to submit with confidence the proposition that the Court below erred to the prejudice of the plaintiffs in directing the amount of the damages to be awarded by the jury for the alleged breach of their contract of agency.

This error will be more apparent when it is noticed that it is alleged in the amended answer (page 81 record), that $1,895 of this amount was a balance in the hands of Higgins & Gilbert to the credit of McCrea on the 10th day of May 1883, a date nine days prior to date of the first transaction complained of, which balance was the result of transactions between plaintiffs and defendant with repect to the purchase of pork and lard, and which are characterized in the answer [record, page 81] as gambling transactions. It will be seen that the inclusion of this last named amount in the amount which the court directed the jury to find as their verdict, in effect, compels them to allow the defendant McCrea to recover in an amount greater than his actual losses could possibly have been.

SECOND POINT OF PREJUDICIAL ERROR.

It is said in the brief filed by defendant, on page 43: "At the time the contracts were entered into with Eldridge and others McCrea had the right to rely upon Eldridge & Co. for the performance of the contract or contracts made with that firm."

It is alleged in the third cause of action set forth in the petition that a certain commission would be paid by McCrea for making *purchases* of the pork and lard referred to: [Page 5 of record.] As it appears from the admissions referred to on page 42 of defendant's brief, such purchases were actually made. It follows therefore that those commmissions for purchases were actually earned by the plaintiffs, and should have been taken account of in some way in the trial of the case.

If actual damage had been done to McCrea by the alleged cancellation of contracts, the amount that had been earned by the plaintiffs and was due and payable from the defendant McCrea to the plaintiffs should have been taken into account in the reduction of damages, and it is manifestly erroneous for the court to have charged the jury that the defendant McCrea was entitled to recover upon his cross-action against the plaintiffs *all* the money which he advanced in pursuance of the contracts.

THIRD POINT OF PREJUDICIAL ERROR.

There was error in the court's directing the jury as a matter of law that there had been no valid substitution in accordance with the rules of the Board of Trade, and that therefore the plaintiffs could in no event recover anything. It is an admitted fact in the case that the defendant McCrea was acquainted with the rules of the Chicago Board of Trade. It is further shown that he was acquainted with the customs of the Board and the manner of dealing of its members. His own testimony shows this, as appear on page 102 of the record, near the top, where he is recorded as saying, referring to section 6 of rule 26: "I never stated to him that I was acquainted with the rule. *I was acquainted with the manner of dealing.*"

The customary manner of dealing by those who have made for themselves rules of government must be held to be the interpretation of such rules. If McCrea was acquainted with the manner of dealing on the Board of Trade he was acquainted with the customary method of off-setting, or substituting contracts.

There is uncontradicted proof in the record that the customary manner of dealing of members of the Board of Trade was followed by these plaintiffs in the transactions referred to, and that at all times in doing the business of McCrea they followed and observed the customary interpretation of those rules. On page 91 of the record, the witness, Fred. F. Gilbert, appears as testifying: "That the property purchased by the plaintiffs for McCrea, in regard to which this suit is brought, was delivered to the plaintiffs on the first of August, and was received and paid for by them; that they notified McCrea of such receipt, and asked him to give them orders with respect to its disposition, and notified him that unless he took the property and reimbursed the plaintiffs for their advances, the same would be sold for his account; that the defendant McCrea gave no orders with respect to the property, and consequently the same was sold by the plaintiffs for his account on the Board of Trade, and the proceeds of such sale credited to his account.

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[Record page 91 and 92.]

"That under the rules of the Board of Trade they are entitled to the commissions mentioned in their petition."

On page **93** of the record there appears the following testimony of the same witness:

"Q. Now, I'd like to know what you mean by telling the court and jury in the face and eyes of the cancellation of every contract with these men from whom you had purchased this property for McCrea that they delivered it on the 1st of August and you had to pay for it; what do you mean by that?

A. On May 19th we bought one thousand barrels of pork of George C. Eldridge & Co.; we offset these contracts May 24th, May 23d, May 25th and May 24th, and in place of that contract stood upon our books contracts from William Kirkwood & Co., Henry Memmor & Co., Seabury, French & Co., and Schoenemann & Co.; it came through quite a number of persons until it finally came down to the parties with whom we had contracts, and they delivered us the stuff, and the sum total we paid the parties for that stuff together with the advances we paid out therefor, makes the exact amount of $198,095.00. What we paid for the stuff, together with the amount we had paid out before, made the amount of money we paid out for James McCrea the sum mentioned. *We did that according to our rules on the board.*"

On page 106 of the record, in the deposition of F. F. Gilbert, offered in evidence by the defendant, there appears the following:

"Q. Did you purchase the pork in the name of McCrea or in your own name?

A. In the name of Higgins & Gilbert, sir.

Q. You did not purchase in the name of McCrea?

A. No, sir, they would not take any other man's name.

Q. Did you try it?

A. No, sir.

Q. You made no effort to execute the order in the name of McCrea then?

A. No, sir, because it is not customary to give the name of a man that is not a member of the exchange.

Q. Please confine your answers to my questions.

You did not make any attempt to execute the orders in his name, did you, and as agent?

A. Such a thing is never done, sir.

Q. The last question is repeated.

A. We executed the order as agent, but gave our own name because he gave no order to give his name.

Q. You made no attempt to purchase in his name, did you?

A. Why no, certainly not. If we should try to do that we should be laughed at.

Q. Did you buy that partiular lot, that thousand barrels of pork from Eldridge & Co. for McCrea—was that the purpose of it?

A. Yes, for McCrea's account.

Q. You purchased that particular lot on purpose for McCrea?

A. Yes sir.

Q. Did you report the purchase to him?

A. To Mr. McCrea, yes sir.

Q. Did you state to him from whom you made the purchase?

A. No sir.

Q. Why not?

A. Because he looked to us entirely for it and held us responsible.

Q. What do you mean by looked to you?

A. He looked to us to fulfill the contract; that is all we got the commission for."

On page 109 of the record in the same deposition the following appears:

"Q. You relieved Eldridge & Co. from the performance of that contract, didn't you, from the delivery of that particular lot of pork, in August, didn't you?

A. Yes, according to the rules of the Board of Trade. I can't give you the rule; we acted according to the rule.

Q. You know whether it is true or not, Mr. Gilbert, that you released right in the same month Eldridge & Co from the performance of that contract; you know whether that is true?

A. That is true; *we did it under the rules.*"

On page 110 of the record in the same deposition there appears the following:

"Q. Now, as I understand you, you took the liberty of releasing Eldridge & Co. from delivering any of that pork in August, didn't you?

A. Yes, under the rules of the Board.

Q. You released him under the rules of the Board.

A. We released him from that contract as the Board of Trade allowed us to do under the rules."

There is nowhere in the record any evidence whatsoever that even tends to prove that the method pursued by Higgins & Gilbert in their transactions for McCrea were not strictly in accord with the customary interpretation of the rules of the Board, as shown by the above quotations from the record. We claim, therefore, that the court erred in directing the jury that the rules had not been complied with, or, in the language of the court: "but the court instructs you, that assuming plaintiffs' contention in this regard to be true, and assuming that the plaintiffs themselves have told the truth in this case, there has been no valid substitution of other contracts for those that were cancelled." * * * * * *

On the assumption that the plaintiffs told the truth in their testimony, there was a complete observance upon their part of the rules and customs of the Chicago Board of Trade, and it was not only error in the trial court to direct a verdict in behalf of the defendant in the amount stated, but also in giving the direction which prevented the plaintiffs from recovering a verdict in any event.

FOURTH POINT OF PREJUDICIAL ERROR.

Without relying upon the evidence of the customary interpretation of the rule of the Board of Trade with respect to substitutions set forth in the record, we submit that the court erred in directing the jury to return a verdict for the defendant, McCrea, for his advances, because if the plaintiffs acted strictly in accordance with the requirements of such rule, of course the defendant should not have been allowed to recover, and there should have been a verdict for the plaintiffs in the amount of their claim.

It is shown in the record and admitted in the brief filed for defendant, as heretofore pointed out, that the plaintiffs actually made the contracts which they were directed by McCrea to make and that consequently there was an existing obligation as between Eldridge & Co. and the others with whom contracts were made with McCrea for the delivery in August of the quantities of pork and lard mentioned in the petition.

Under the familiar rules which apply to the relation of principal and agent, the agent empowered to buy only, has no power to sell. An agent empowered to make a contract has no implied authority to release or cancel it. If the defendant, McCrea, had authorized some individual in Chicago without reference to the Board of Trade to make contracts for him for the delivery in August of pork and lard, and such agent, in obedience to his instructions, had made such contracts, the person or persons thus obligated to make delivery could not escape such obligation by showing that after such contracts were complete, the agent of McCrea, without direction and authority from him, had gone through the form of releasing and cancelling such contracts.

And in the case at bar, if the rules of the Board of Trade did not permit Higgins & Gilbert to release and cancel the contracts made by them in behalf of McCrea, no release or cancellation of such contracts ever occurred, and the original contracts between

McCrea and Eldridge & Co. and the others named could at all times have been enforced by McCrea, had he regarded them as advantageous, notwithstanding the action of the plaintiffs, which are characterized by the court as *attempted* substitution.

The court below directed the jury that there had been no valid substitution. It follows that there could have been no valid cancellation. The rule of the Board shown in the record, and so many times quoted in the briefs, distinctly provides that cancellation can only occur when there is substitution. The two things are necessarily concurrent. Cancellation could no more occur without a valid substitution than a substitution could occur without cancellation. Eldridge & Co. could not have accepted a cancellation of the contracts made by them unless such cancellation was made in accord-with the rule of the Board or by the express direction of McCrea. The relation of the parties is well stated in the brief filed for defendant, on page 47:

"It clearly appears that whatever the plaintiffs undertook to do in Chicago upon the part of the defendant was undertaken to be done as his agents and representatives. They entered into the contract with Eldridge and others it is true in their own name, but as they were commission merchants buying and selling upon the account of others in Chicago, it was well known and understood by persons with whom they dealt that the purchases made by them were made upon account of some principal, and that they were but agents in the transaction."

Eldridge & Co. being aware of the fact that Higgins & Gilbert were the agents of McCrea or some other, could not by any form of agreement with Higgins & Gilbert cancel or annul the contract existing between them and Higgins & Gilbert's principal, unless such cancellation or annulment was *strictly in compliance* with the rules of the Chicago Board of Trade.

It follows therefore, that no possible damage could have resulted to McCrea by reason of the action of the plaintiffs with respect to cancellations and substitutions. If Higgins & Gilbert, while acting in the capacity of agents for McCrea, had physically destroyed valuable contracts made in behalf of McCrea, and as a result McCrea was injured and damaged by being put to expense and trouble in enforcing his rights under such contracts, we can easily see that he would be entitled to recover in the amount of such damage; but we never yet have seen a precedent for an action by a principal against his agent founded upon an allegation that the agent had attempted to do something that it was impossible for him to do, that is, bind his principal beyond the scope of his authority as agent. But that is precisely the case at bar. McCrea is allowed to recover damages from Higgins & Gilbert his agents, on the ground that they attempted to cancel contracts which, under the law, they had no authority to cancel, and this, in the face of the fact that it appears from the record [page 100] that prior to the date fixed for fulfillment of the contracts by his letters of July 16th and July 24th, McCrea repudiates all contracts made by Higgins & Gilbert in his behalf.

The suggestion is hardly necessary, that if it were shown by the evidence that no contracts were ever made by Higgins & Gilbert, but they pretending that such was the fact, had obtained money from McCrea, he having paid such money in the faith that their reports were true, that we would admit a right of recovery in him. But no such admission is made necessary by the facts in this case.

The reference to the case of Irwin vs. Williar, 110 U. S. Reports, 499, is not important in this case for the reason that the conditions are not the same. In the case at bar it is conceded and even directed by the court that the defendant McCrea had knowledge of and was familiar with the rules of the Chicago Board of Trade. In the case cited, an important feature was the knowledge or ignorance of the principal, who dealt through brokers, of the rules and customs of the Exchange or Board of which such brokers were members. In deciding the case the court says:

"A custom among brokers in the settlement of differences which works a substantial and material change in the plaintiff's rights or obligations is not binding upon the principal without his assent, and that assent can be implied only from knowledge of the custom which it is claimed authorizes it."